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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1950**

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# No. 280

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CAPITAL AIRLINES, INC.,
*Petitioner,*

*vs.*

THE UNITED STATES

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**PETITION OF CAPITAL AIRLINES, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS**

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CHARLES H. MURCHISON,
WILLIAM A. CARTER,
*Attorneys for Petitioner,*
*Capital Airlines, Inc.*

STOCKTON, ULMER & MURCHISON
*1016 Ring Building*
*Washington 6, D. C.*
*Of Counsel*

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SUPREME COURT OF THE UNITED STATES

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# No. 280

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*Petitioner,*

*vs.*

THE UNITED STATES

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## PETITION OF CAPITAL AIRLINES, INC., FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

---

*To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Capital Airlines, Inc., respectfully shows to this Court:

### Statement of the Matter Involved

Petitioner is an air carrier engaged in transporting persons, property and mail by aircraft in the United States under certificates of public convenience and necessity issued to it by the Civil Aeronautics Board pursuant to the Civil

Aeronautics Act of 1938, as amended. (52 Stat. 977 ff., 49 U.S.C. §§ 401-680.)[1]

When the Act was passed in 1938, Capital continuously for over ten years had been and was engaged in the transportation of persons and property by aircraft in the United States as a common carrier and had built up a substantial business in such transportation, representing a substantial investment. When the Act was passed, Capital was also engaged in the transportation of mail for the United States under contracts.

By the terms of the Act Capital was prohibited from continuing its existing business unless Capital should apply for and secure from the Board certificates authorizing the business to continue; and Capital's existing contracts for carrying the mail were cancelled. As to carriers already in business, such as Capital, the Act provided that, upon application, such certificates should issue automatically, without proof of public convenience and necessity. In order to avoid the total destruction of its business and the forced liquidation of its physical assets, Capital was compelled to apply for such certificates upon the terms prescribed by the Act. Those terms made it *compulsory* to carry the mail, *compulsory* to furnish adequate service, equipment and facilities for the transportation described in the certificates, and *compulsory to comply with all regulations* of the Board designed *to develop air transportation* "to the extent and of the character and quality required for the commerce of

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[1] In this petition and accompanying brief the Civil Aeronautics Board and its predecessor, the Civil Aeronautics Authority, will be called the "Board". The Civil Aeronautics Act of 1938 will be called the "Act". Petitioner will be called "Capital". Prior to changing its corporate name the name of Petitioner was Pennsylvania-Central Airlines Corporation.

All italics are ours unless otherwise specified.

Numerical references in parentheses are to pages of the Record.

the United States, the Postal Service, and the national defense".

Under the Fifth Amendment of the Constitution Capital is entitled to receive just compensation for these compelled services. After a carrier has performed such compelled services, the Act contains no provisions for the ascertainment and award of just compensation and designates no tribunal to which application should be made for such ascertainment an award.

The Act contains in Section 406 a provision that the Board shall fix and determine, from time to time, "fair and reasonable *rates* of compensation for the transportation of mail . . ." and a provision that, in fixing such *rates*, the Board shall take into consideration:

> "such standards respecting the character and quality of service *to be* rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, *to enable such air carrier* under honest, economical, and efficient management, *to maintain and continue the development of air transportation* to the extent and of the character and quality *required* for the commerce of the United States, the Postal Service, and the national defense".

This is the only provision in the Act for the payment of any compensation to the air carriers for the compulsory services rendered by them to the Government and no remedy is provided by the Act in the event that rates fixed for the future for carrying the mail shall, in point of actual fact, prove to have been insufficient to yield just compensation for the aggregate services rendered.

Capital performed such compelled services throughout the period from September 1, 1945 to January 13, 1947.

During that period it received certain revenues derived from the carriage of persons and property at competitive rates approved by the Board, and received certain revenues derived from the carriage of mail at *rates* fixed by the Board in 1942, but the total aggregate revenues obtained failed by $5,793,308 to equal just compensation for the services requisitioned by the Government, and, although at all times performing such services under honest, economical and efficient management, Capital suffered a net loss of about $3,560,566.

Under the misapprehension that Congress, in drafting the Act, intended for the Board to discharge the full Constitutional obligation to pay just compensation, Capital, on January 14, 1947, filed a petition with the Board for the ascertainment and award of the deficiency in compensation, but the Board declined to consider the petition on its merits, holding that it had no power to allow additional compensation for any period prior to the filing of the petition. *Capital Airlines, et al.—Motions,* 8 C.A.B. 685. The position of the Board that it was without jurisdiction to make the award requested was affirmed by the Court of Appeals for the District of Columbia Circuit in *Capital Airlines, Inc.* v. *Civil Aeronautics Board,* 171 F. (2d) 339, and that proposition became settled law in the decision of this Court in *Transcontinental & Western Air, Inc.* v. *Civil Aeronautics Board,* 336 U. S. 601. Capital, therefore filed its Petition in the Court of Claims as authorized by Section 1491 of Title 28 U. S. C. to recover such just compensation (1-7).

The Court of Claims sustained a demurrer interposed by the Government to the petition alleging the foregoing facts, and dismissed the petition upon the grounds: (1) that the Court of Claims was without jurisdiction to entertain the suit because it must be regarded as an attempt to obtain a review and revision of a rate order of the Board; and (2)

that the facts alleged in the petition were not sufficient to show that there has been a "taking" of Capital's property or services within the meaning of the Fifth Amendment.

**Jurisdictional Statement**

This Court has jurisdiction to review the judgment of the Court of Claims by virtue of Section 1255 (1) of Title 28 U. S. C.

**Statutes Involved**

The statutes involved are the compulsory provisions of the Civil Aeronautics Act of 1938 (52 Stat. 977 ff., 49 U. S. C. §§ 401-680.) and the Fifth Amendment to the Constitution of the United States, especially that portion which provides "nor shall private property be taken for public use without just compensation".

**The Questions Presented**

1. *Are compelled services and compelled use of property by the Government a "taking" within the protection of the Fifth Amendment?*

This question has been answered in the affirmative by this Court many times. *United States* v. *Russell,* 13 Wall. 623; *Hollister* v. *Benedict, etc. Mfg. Co.,* 113 U. S. 59; *Railroad Commission* v. *Eastern Texas R. Co.,* 264 U. S. 79; *United States* v. *New York Central R. Co.,* 279 U. S. 73.

2. *Were the services rendered by Capital to the Government compulsory?*

The Court of Claims opinion was on defendant's demurrer to Capital's petition, the allegations of which must be taken as true upon demurrer. So the question, therefore, is whether the petition alleged facts showing that Capital's services to the Government were compulsory. The petition

in paragraph 3 alleges that Capital under the terms of the Act was: (1) *required* to transport mail, (2) *required* to provide necessary and adequate facilities therefor, (3) *required* to provide interstate air transportation for mail, persons and property as authorized by the certificates issued to it, (4) *prohibited* from abandoning any route or part thereof for which a certificate had been granted, (5) *required* to comply with the provisions of the Act and any order, rule or regulation issued thereunder, and (6) *required* to develop air transportation sufficient to meet the present and future needs of the commerce of the United States, the Postal Service and national defense.

The petition also alleges that violations of the Act or any order, rule or regulation issued thereunder were made criminal offenses, and in addition, certificates issued to Capital could be revoked if Capital failed to comply with the Act or any rule or regulation issued thereunder. Furthermore, the petition alleges that Capital under the Fifth Amendment to the Constitution of the United States is entitled to just compensation for its services and for the use of its property *required* by and for the benefit of the Government under the *compulsory* provisions of the Act aforesaid (in each instance where compulsion was alleged or criminal penalties were referred to the applicable section of the Act was cited).

These allegations in the petition (all admitted by the defendant's demurrer) clearly state that Capital's services were *compelled* services and that such services were subjected to such *compulsion* as to place Capital under the protection of the Fifth Amendment to the Constitution of the United States.

The services for which just compensation is here sought were the same in basic nature (i.e., the furnishing of transportation under statutory compulsion, though far greater

in extent) as the services rendered under like compulsion by the railroads in carrying the mail.

In the *New York Central Case,* 279 U. S. 73, this Court established the constitutional right to recover just compensation therefor. *The allegations of the petition of the rendition of the services under compulsion and the non-payment of just compensation therefor are admitted by the demurrer.* Unless the Court of Claims is to be permitted to overrule the *New York Central Case* (and other Supreme Court cases herein cited) an affirmative answer to this question is required.

3. *Did the Civil Aeronautics Act deprive the Court of Claims of jurisdiction, conferred generally by Section 1491 as to claims for just compensation under the Fifth Amendment, with respect to cases where a mail rate fixed for a period in the future, though fair and reasonable when fixed, actually fails to yield just compensation for the aggregate services required by the Government?*

The conclusion of the Court of Claims that the mail rate provisions of the Act deprived the Court of Jurisdiction resulted from a complete misconception and misapplication of the decision of this Court in the case of *United States* v. *Jones, Receiver,* 336 U. S. 641, and other applicable Supreme Court cases.

**Reasons for Allowance of the Writ**

1. The Court of Claims has reversed the *New York Central Case, supra,* and other applicable decisions of this Court without so much as a passing word of recognition. This error vitally and adversely affects and will continue to so affect the fundamental Constitutional rights of Capital and all the other similarly certificated airlines in the United States. The decisions of this Court in the cases of *United States* v. *New York Central R. Co.,* 279 U. S. 73;

*Seaboard Airline R. Co.* v. *United States,* 261 U. S. 299; and *United States* v. *Griffin,* 303 U. S. 226, if given proper effect would have required said Court to hold that it had jurisdiction to entertain the suit. Said cases hold that the rendition of services compelled by the Government confers the right to just compensation provided by the Constitution and that this right cannot be taken away by statute; that if no other forum is prescribed by statute, the Court of Claims has jurisdiction to ascertain and award such compensation. The Court of Claims, however, gave improper effect to the decision of this Court in the case of *United States* v. *Jones, Receiver,* 336 U. S. 641 by construing said decision to deny the jurisdiction of said Court in this case. *The Jones Case is wholly inapplicable to this case.*

2. The Court of Claims has decided an important question of Federal Law which has not been, but should be, settled by this Court, to-wit, the question whether Capital and all the other similarly certificated airlines in the United States which were and are compelled to render the services required by the Act and were and are subjected to all the compulsory provisions of the Act, are entitled under the Fifth Amendment to receive just compensation for the aggregate services *required* of them by the Act not only for carrying the mail, but for building up a system of air transportation required by the commerce of the United States and the national defense.

These reasons are discussed more fully in Capital's attached brief.

Wherefore, your Petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the United States Court of Claims, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the

said Court had in the case numbered and entitled in its Docket No. 49241, *Capital Airlines, Inc., Petitioner* v. *The United States,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the order of said Court of Claims be reversed by this Court.

CHARLES H. MURCHISON,
WILLIAM A. CARTER,
*Attorneys for Petitioner.*

STOCKTON, ULMER & MURCHISON,
*1016 Ring Building,*
*Washington 6, D. C.,*
*Of Counsel.*

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1950**

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# No. 280

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CAPITAL AIRLINES, INC.,

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*vs.*

THE UNITED STATES

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## BRIEF OF CAPITAL AIRLINES, INC., IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The decision of the Court of Claims is reported at 90 F. Supp. 926 and also appears in the Record before this Court (8-17).

The statement of this Court's jurisdiction, and the statement of the case, have already been set forth in the attached petition for writ of certiorari.

### Specification of Errors

1. The Court of Claims erred in sustaining the demurrer of the United States and in dismissing the petition.

2. The Court of Claims erred in holding that the facts alleged in the petition (which were admitted by demurrer) are not sufficient to show that there has been a "taking"

of Capital's property and services for a public use within the meaning of the Fifth Amendment to the Constitution.

3. The Court of Claims erred in holding that it was without jurisdiction to entertain the suit.

4. The Court of Claims erred in holding that there was no material difference, insofar as the jurisdiction of the Court is concerned, between this case and the case of the *United States* v. *Jones, Receiver,* 336 U. S. 641.

5. The Court of Claims erred in holding that this case must be regarded as an attempt to obtain a review and revision of a rate order of the Civil Areonautics Board.

## Summary of Argument

### 1. Required carriage of mail and other required services are protected by the fifth amendment

In the case of *United States* v. *New York Central R. Co.,* 279 U. S. 73, the compulsory carriage of the mails by railroads was held to be a service for which just compensation must be paid under the Constitution. This Court said:

> ". . . the service is required (U. S. C. Title 39, Sec. 541); refusal is punished by a fine of $1,000.00 a day (U. S. C. Title 39, Sec. 563) . . . Naturally, *to save its constitutionality* there is coupled with the requirement to transport a provision that the *railroads shall receive reasonable compensation. . . . The Government concedes, as it must, that reasonable compensation for such services is a constitutional right. So far as the Government has waived its immunity from suit, this right may be enforced, in the absence of other remedies. . . . by an action to recover compensation already due.*" (279 U. S. at 78.)

The other services (i. e., on behalf of the commerce and national defense) and use of Capital's property required

by the Act are likewise protected by the Fifth Amendment. *United States* v. *Russell,* 13 Wall. 623; *Hollister* v. *Benedict,* 113 U. S. 59; *Railroad Commission* v. *Eastern Texas R. Co.,* 264 U. S. 79.

The fundamental predicate upon which each of these cases was decided is the fact that compelled services and compulsory use of property by and on behalf of the Government constitute a "taking" within the protection of the Fifth Amendment.

If the services rendered by Capital to the Government were, in fact, rendered under compulsion, just compensation therefor is, as held in the *New York Central Case,* the admitted duty of the Government. The statute commands Capital to carry mail when required (Section 401 (m)), to alter or modify schedules as required by the Postmaster General (401 (e)), not to abandon any route (401 (k)), and to provide adequate service, equipment and facilities on such routes to carry mail, persons and property (404 (a)); and Section 902 imposes criminal penalties for violation of any provision of the Act or any rule, order or regulation issued by the Board for the purpose of developing an air transportation system adapted to the present and future needs of the Commerce of the United States, the Postal Service and the national defense; *all these indelibly stamp the Act as compulsory.* In view of the allegations in the petition there is no basis for the Court of Claims holding that "the facts alleged in the petition are not sufficient to show that there has been a 'taking' of plaintiff's property or services for a public use within the meaning of the Fifth Amendment to the Constitution." (Court of Claims Opinion, penultimate paragraph).

The allegations of the Petition are perfectly clear that Capital:

(1) Was *compelled* by the Act to carry the mail.

(2) Was *compelled* by the Act to continue operating all of its routes regardless of loss.

(3) Was *compelled* by the Act to furnish services, facilities and equipment adequate not only for carrying mail, but also persons and property on such routes.

(4) Was *compelled* by the Act to *build up* its services, facilities and equipmen to meet not only the present, but the *future* needs of the *commerce* of the United States, the *Postal Service* and the *national defense.*

These allegations are admitted as well as the allegation that just compensation for said services in the amount of $5,793,308 remains unpaid. They clearly show a "taking" of Capital's property for public use without the payment of just compensation. This taking is protected by the Fifth Amendment.

2. THE COURT OF CLAIMS IS NOT DEPRIVED OF JURISDICTION BY THE ACT

Since the petition sufficiently alleges a "taking" of Capital's property and services for public use so as to entitle Capital to sue for just compensation in the Court of Claims the only question remaining is whether that Court is deprived of jurisdiction by the mail rate provisions of the Civil Aeronautics Act. It is clear that the mail rate provisions of the Act do not have that effect. This Court has held in the case of *Transcontinental & Western Air, Inc.* v. *Civil Aeronautics Board,* 336 U. S. 601, that the Board does not have the *power* to ascertain and award just compensation for the period in question, which period antedated the filing of the petition with the Board. The Court of Claims in its opinion, in this case, held that there was no requirement in the Act that the *Board,* in fixing mail rates, "shall determine and pay 'just compensation' in the sense in which that term is used in the Fifth Amendment." Con-

sequently, the jurisdiction of the Court of Claims to determine and award such compensation under the Tucker Act remains and is clear.

The Court of Claims, nevertheless, erroneously held that the case of *United States* v. *Jones, Receiver,* 336 U. S. 641, supports the proposition that the mail rate provisions of the Act limited the jurisdiction of the Court of Claims. This is a complete misconception of the *Jones Case.* The decision of this Court in the *Jones Case* held only that the appeal was being prosecuted in the wrong forum. (See *infra,* pp. 23-26.) The Commission in the *Jones Case* at all times had the *power and jurisdiction* to revise and increase the rate for the period in question (which was a period *subsequent* to the filing of the Petition in that case), so as to award the Receiver exactly the same amount in dollars and cents (if it found on the merits that such amount was necessary to provide just compensation) as was awarded by the judgment of the Court of Claims.

In the case at bar, as settled by the decision of this Court, in *Transcontinental & Western Air, Inc.* v. *Civil Aeronautics Board,* 336 U. S. 601, the Board had no *power or jurisdiction* to award just compensation to Capital for the period in question, which antedated the filing of its petition with the Board. In the *Jones Case* the Commission had twice reviewed a past period and found on the merits that the rate then in effect had afforded the Receiver just compensation for carrying the mail. *In the case at bar, the Board has never found on the merits that the mail rate in effect for the period in question afforded Capital just compensation for the aggregate services required for the Commerce of the United States, the Postal Service, and the national defense.* In fact, the Board had no *power* to inquire into that issue. Since the relief sought in the case at bar is entirely beyond the scope of the Board's powers, there can be no question here of the Court of Claims substituting

its judgment for that of the Board, or of short-circuiting the Board in the exercise of its rate-making powers.

If Capital had any remedy before the Board to recover for services performed and not fully compensated it would be confined to that remedy and the appeal from an adverse decision provided by statute. Having no such remedy, the jurisdiction of the Court of Claims is clear. *U. S.* v. *Griffin.* (*infra* p. 18.)

## Point I

### Compelled Services and Use of Property Constitute a "Taking" Within the Protection of the Fifth Amendment

The opinion of the Court of Claims failed to state in what respect it regarded the allegations of Capital's petition as insufficient to show that there had been a "taking" of its property, or services, within the meaning of that term as used in the Fifth Amendment. Allegations covering similar services and use of property in other cases have so frequently been held to create a right to just compensation that it is difficult to conclude that the Court meant to hold that, because Capital was not physically deprived of its property, there was no "taking." Yet this is the only possible explanation of the Court of Claims erroneous finding in the last paragraph of its opinion that "the facts alleged in the Petition are not sufficient to show that there has been a 'taking' of Plaintiff's property or services for a public use within the meaning of the Fifth Amendment to the Constitution." As we have clearly shown, the Petition does allege in most positive language that Capital has performed *compelled* services and its property has been subjected to compulsory use by and on behalf of the Government and that Capital has not received just compensation therefor. The Court of Claims, therefore, has undeniably and completely ignored the fundamental prin-

ciples of the *New York Central Case* and the other cases which hold that compelled services and compelled use of property do constitute a "taking" within the protection of the Fifth Amendment. This basis error of the Court of Claims is in itself sufficient to require the granting of this petition for certiorari.

The case of *United States* v. *Russell,* 13 Wall. 623, long ago established the fact that Plaintiff does not have to be physically deprived of its property in order to constitute a "taking."

In the *Russell Case,* officers of the United States, acting within their lawful authority in time of war, compelled Russell to use three steamboats owned by him, without any agreement as to compensation, for carrying Government freight. Throughout the period during which the vessels were so employed they *remained in command of the owner as master or of a person employed by him and under his pay and control, and the owner manned and victualed the vessels and paid their running expenses.* The vessels were not destroyed or damaged and were returned to the exclusive control of the owner as soon as the services for which they were required had been performed. The Supreme Court held that the compelling of the services and use of the vessels was a "taking" of private property for which the Government was bound to pay just compensation.

In the case of *Hollister* v. *Benedict, etc. Mfg. Co.,* 113 U.S. 59, this Court said, with reference to the use of a patented invention by the Government:

> "If the right of the patentee was acknowledged and, without his consent, an officer of the Government acting under legislative authority, *made use* of the invention in the discharge of his official duties, it would seem to be a clear case of the exercise of the right to eminent domain. . . " (113 U.S. at 67)

In the case of *United States* v. *New York Central R. Co.*, 279 U.S. 73, the compulsory carriage of the mails by railroads was held to be a service for which just compensation must be paid under the Constitution. This Court said:

> ". . . the service is required (U.S.C. Title 39, Sec. 541); refusal is punished by a fine of $1,000.00 a day (U.S.C. Title 39, Sec. 563), . . . Naturally, to save its constitutionality there is coupled with the requirement to transport a "provision that the railroads shall receive reasonable compensation . . . *The Government concedes, as it must, that reasonable compensation for such services is a constitutional right. So far as the Government has waived its immunity from suit, this right may be enforced, in the absence of other remedies, . . . by an action to recover compensation already due.*" (279 U.S. at 78)

This Court further said in the case of *Railroad Commission* v. *Eastern Texas R. Co.*, 264 U.S. 79:

> "The usual permissive charter of a railroad company does not give rise to any obligation on the part of the company to operate its road at a loss. . . . *To compel it to go on at a loss,* or to give up the salvage value, *would be to take its property without the just compensation* which is a part of due process of law."

To operate its routes at a loss is exactly what the petition alleges Capital was compelled to do in this case.

Again in *United States* v. *Griffin*, 303 U.S. 226, the Court said:

> "and since railway mail service is compulsory, the Court of Claims would, under the general provisions of the Tucker Act, have jurisdiction also of an action for additional compensation if an order is confiscatory." (303 U. S. at 238)

The service in the case at bar was just as compulsory as in the cited cases. The language of Section 401 (m) of the

Act is that the carrier "*shall* provide necessary and adequate facilities and services for the transportation of mail . . ."; of Section 404, "It shall be the *duty* of every air carrier to provide and furnish . . ."; of Section 401 (k), "No air carrier shall abandon any route . . ."; of Section 405 (g) "to the extent required by the Postal Service. . . . such mail *shall* be transported"; and of Section 406 (b), "to maintain and *continue the development* of air transportation to the extent and of the character and quality *required* for the commerce of the United States, the Postal Service and the national defense". Section 902 (a) fixes the criminal penalty for violations at from $500 up to $2,000 per day.

The services performed by air carriers under the Act are, therefore, compulsory and failure to perform is punishable by drastic penalties and fines. The Board has consistently recognized this to be true. In the recent *Alaska Airlines Mail Rate Case,* 9 C.A.B. 440, the Board said:

> "The Civil Aeronautics Act is a comprehensive statute designed to regulate air commerce. Its concern is not only with the needs of the postal service but with national commerce and defense as well. *Certificates of convenience and necessity carry with them many obligations imposed by law.* Section 401 (m) *requires* a carrier certificated for mail service to carry mail whenever required by the Postmaster General. Section 404 (a) states in part that 'it shall be the *duty* of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor.' Section 401 (k) forbids the abandonment of any route without previous approval by the Board, which approval may be given only upon a finding that abandonment is in the public interest. Failure to fulfill these and many other obligations are not matters to be compensated for by mere damages. Section 401 (h) provides for suspension or revocation of certificates. Title IX imposes

serious civil and criminal penalties. *The Act, however, does not stop with imposition of obligations alone.* In addition to the usual benefits that go with certificates of public convenience and necessity, the Board is directed under Section 406 to consider the '. . . need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient mangement, to maintain and continue the development of air transportation to the extent and of the character and quality required for the Commerce of the United States, the Postal Service, and the national defense.' "

Furthermore, the Board has recognized consistently that the services so compelled are threefold in nature (i.e., on behalf of the commerce, the Postal Service, and the national defense) and are compensated for by the mail payments made to the airlines as evidenced by the following:

". . . the provisions of Section 406 (b) quoted above, as well as other provisions of the Act, especially those of Title IV 'Air Carrier Economic Regulation', and Section 2, 'Declaration of Policy', leave no doubt of the intent of Congress to recognize a public interest in air transportation beyond that reflected in the Postal Service, *and to provide compensation therefor to the air carriers performing the service . . .*" (*Mid-Continent Airlines, Inc., Mail Rates,* 1 C.A.A. at 49)

". . . Obviously, the language just quoted contemplates an examination of all non-pay mail operations in fixing the rate of air mail compensation, and a consideration, in arriving at the rate, of all such operations as may be determined to correspond to the requirements of commerce, the Postal Service, and the national defense.

"The standard set up by the Civil Aeronautics Act *required mail pay to support the aggregate services of commerce, the Postal Service, and the national de-*

*fense . . .*" (*Northwest Airlines-Mail Rates,* 1 C.A.A. at 279 and 280).

". . . If the schedules flown are not required by the Postal Service, the Board must then consider them in the light of the requirements of commerce and the national defense. The requirements of commerce for an existing service must be adjusted largely in terms of the response made by commerce to the service as offered . . ." (*Braniff Airways—Mail Rates,* 1 C.A.A. 353).

"*The compensation which the carrier receives thus becomes compensation not only for carrying the mail, but for the building up of a system of air commerce which will serve the nation's commerce and security as well.*" ( *American Airlines-Mail Rates,* 3 C.A.B. 323, 335 (1942)).

Note that the Board consistently and repeatedly recognizes that mail pay is compensation for services rendered. We shall hereinafter show that the question as to whether compensation is just is a judicial question. (*Infra* pp. 26, 27.)

Particular recognition of the services rendered in behalf of national defense by air carriers, both domestic and international, was given by the Board in *American Airlines Mail Rate Case,* 3 C.A.B. 323:

"*Congress gave formal expression for the first time in the Civil Aeronautics Act to the importance of air transportation to the national security; and in that Act it laid down for the first time a comprehensive policy of Government financial aid and encouragement to the airlines as a means of implementing the national defense objective. Throughout the text of this statute can be discerned the basic assumption that a sound civil aviation is of essential value to the national security. If any doubt existed as to the validity of such assumption, that doubt has been removed by the assistance which the air carriers of the United States, both domes-*

*tic and international, have rendered to the military forces in the present war.*" (3 C.A.B. at 335)

The Court of Claims said in its opinion in the case at bar that it could not find anything in the Act which directed the Board to ascertain and award just compensation, and it seemed to think that the failure of the statute to provide for its deprived Capital of the right to recover just compensation. The law is definitely to the contrary. In the case of *Jacobs* v. *United States,* 290 U.S. 13, the Court said:

> "The suits were based on the right to recover just compensation for property taken by the United States for public use in the exercise of its power of eminent domain. *That right was guaranteed by the Constitution.* The fact that condemnation proceedings were not instituted, and that the right was asserted in suits by the owners did not change the essential nature of the claim. *The form of the remedy did not qualify the right. It rested upon the Fifth Amendment. Statutory recognition was not necessary.*" (290 U.S. at 16)

In the case of *Seaboard Airline R. Co.* v. *United States,* 261 U.S. 299, the Court said:

> "Just compensation is provided for by the Constitution and the right to it *cannot be taken away by statute*". (261 U.S. at 304)

Where the statute under which the taking is effected fails to provide other machinery for obtaining just compensation, the foregoing cases show clearly that the Court of Claims has jurisdiction. To the same effect, see *Hurley* v. *Kincaid,* 285 U.S. 95, and *Yearsley* v. *W. A. Ross Construction Co.,* 309 U.S. 18.

## Point II

**The Civil Aeronautics Act Did Not Deprive the Court of Claims of Jurisdiction to Ascertain and Award Just Compensation to Air Carriers for Compelled Services Rendered in Periods During Which a Rate for Carrying Mail, Previously Fixed by the Board, Failed to Yield Such Compensation**

The major portion of the opinion below was devoted almost exclusively to advancing the erroneous proposition that the mail rate provisions of the Act deprived the Court of jurisdiction by analogy to the decision of this Court in the *Jones Case*.

There is actually no analogy, but a basic factual and legal distinction between this case and the *Jones Case*. The *Jones Case* was primarily a jurisdictional nightmare resulting from the failure of Congress in the Interstate Commerce Act to provide specifically for judicial review of rate orders of the Commission. The *Jones Case* began as an attempt to set aside an order of the Commission of May 10, 1933, establishing a railway mail rate for the *future*. When the Receiver learned from this Court in the *Griffin Case* that the three-judge District Court under the Urgent Deficiencies Act was the wrong forum in which to seek such judicial review, he mistakenly sought the same relief from the Court of Claims that he had previously sought from the Commission only to be again advised by this Court that he was in the wrong forum and should have sought his judicial review in the District Court under 28 U.S.C., Section 1339 as a case arising under the postal laws, or under Section 10 of the Administrative Procedure Act. The Receiver's claim retained its fundamental nature throughout as one resting "upon attacks made upon the Commission's findings as being unsupported by the evidence before it and on its conclusions as being contrary to that evidence." (336 U.S.

646). As this Court very pertinently remarked (336 U.S. 653):

> "In other words, what the District Court did by way of examining the orders on their merits, factual as well as legal, the Court of Claims has done in this case".

Therefore, in that case this Court properly held the money judgment awarded by the Court of Claims to "foreclose the Commission from further consideration of the order", and to "short-circuit the Commission in the rate-making process", and to involve "substituting the Court's judgment for the Commission's as to the amount of any new rate which might be fixed". (336 U.S. 670-671).

The case at bar involves none of these features. No attack is here made upon any order of the Board upon any grounds. It is not contended that the mail rate order in effect during the period in question was invalid. In the *Jones Case,* the Commission had twice found upon the merits that the rate previously fixed in 1928 was fair and reasonable for the period from April 1, 1931 to May 10, 1933, and from April 1, 1931 to February 4, 1936. In the case at bar neither the Board nor any other tribunal has ever found on the merits that the mail rate fixed for Capital in 1942 was fair and reasonable for the period from September 1, 1945 to January 13, 1947. Neither the Board nor any court has ever investigated that question. On the contrary, the Board has held that it had no power to ascertain whether or not just compensation has ever been received for that period and if not, to award it. *Capital Airlines, Mail Rates,* 8 C.A.B. 685. This holding of the Board was affirmed by the Court of Appeals for the District of Columbia Circuit in *Capital Airlines* v. *Civil Aeronautics Board,* 171 F. (2d) 339, and was ratified by this Court in *Transcontinental & Western Air, Inc.* v. *Civil Aeronautics Board,* 336 U.S. 601.

In the *Jones Case* the Commission, at all times, had the power to award the same relief which the Court of Claims undertook to award and this Court very pertinently observed that:

> "The policy of judicial restraint is one having regard for the expertise of special agencies charged with performing the rate-making function . . . Such doctrines or policies as those of 'primary jurisdiction' and exhaustion of administrative remedies lie at the very root of the problem."

In the case at bar, there is no administrative remedy. There is no record of the Board to be reviewed. The Board had no power to bring its "expertise" to bear on the problem and it made no determination, legal or factual, which is here being assailed.

From the foregoing, it is perfectly obvious that none of the reasons for denying the jurisdiction of the Court of Claims in the *Jones Case* exists in the case at bar and that the Court of Claims has completely misconceived the effect of that case and misapplied it. The opinion of the Court of Claims clearly recognized that the Board never has jurisdiction of the matter here involved when it said:

> "We cannot find in any of the provisions of the Civil Aeronautics Act a requirement that the Civil Aeronautics Board, in fixing rates for the carriage of United States mail, shall determine and pay 'just compensation' in the sense in which that term is used in the Fifth Amendment, and we think it plain that in enacting the Civil Aeronautics Act Congress had no such concept . . ." (14).

Yet, in denying its jurisdiction, the Court relied solely upon the *Jones Case* where the very opposite was true; where its jurisdiction was denied for the express reason that the Commission *did* have jurisdiction to ascertain and

award the compensation sought, which power the Court was attempting to usurp.

Without making an explicit statement to that effect, there are intimations in the opinion of the Court of Claims that it may have reached its conclusion of lack of jurisdiction upon the theory that the provisions of the Act for fixing rates for the future, as is common in the regulation of public utilities, is the equivalent of awarding just compensation for services rendered to the Government. Such a theory is absolutely untenable and is not supported by the decision in *Capital Airlines, Inc.* v. *Civil Aeronautics Board,* 171 F. (2d) 339, on which the court apparently relied since it said, "In that case the plaintiff also made the contention which it makes here with respect to its right to just compensation . . ." *In the cited case the question was purely one of statutory interpretation as to the power of the Board to award any compensation for a period prior to the date of filing a petition (and the opinion was confined exclusively to that one narrow issue), and the decision was not upon the right of Capital to receive just compensation, or upon the fact of whether or not such compensation had been paid.*

The contention of Capital in that case was that, since it certainly had a right under the Constitution to receive just compensation, the Act *ought* to be *construed* so as to empower the Board to ascertain and award just compensation to vindicate the Fifth Amendment—not that such compensation was not recoverable in any tribunal.

Nothing can be more thoroughly settled than that the award of just compensation is a *judicial function* while the fixing of a rate for future services is a *legislative function.* The judicial function requires the existence of facts already occurred for its exercise. Without a past event to be examined there can be no such thing as just compensation. In *Seaboard Air Line R. Co.* v. *United*

*States,* 261 U. S. 299, in answer to the contention that, since the Lever Act made no provision for it, interest could not be recovered as part of the award for property taken, the Court said:

> "Just compensation is provided for by the Constitution, and the right to it cannot be taken away by statute. Its ascertainment is a *judicial function*".

On the other hand, as recently stated by the Supreme Court in the *Jones Case,* rate-making is "essentially legislative".

In *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, the Court said:

> "By this legislation Congress seems to have assumed the right to determine what shall be the measure of compensation. But this is a judicial, and not a legislative question. The Legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character, but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public taking the property, through Congress or the Legislature, its representative, to say what compensation shall be paid, *or even what shall be the rule of compensation.* The Constitution has declared that just compensation shall be paid and the ascertainment of that is a judicial inquiry." (148 U. S. at 327.)

In *Prentis* v. *Atlantic Coast Line R. Co.,* 211 U. S. 210, Mr. Justice Holmes said:

> "We shall assume, as we have said, that some of the powers of the Commission are judicial . . . But we think it equally plain that the proceedings drawn in question here are legislative in their nature . . . A judicial inquiry investigates, declares and enforces liabilities as they stand *on present or past facts* and under laws supposed already to exist. That is its

> purpose and end. Legislation, on the other hand, looks to the future . . . The establishment of a rate is the making of a rule for the future, and therefore is an act *legislative,* not judicial, in kind . . ." (211 U. S. at 225.)

Where the Constitutional obligation to pay just compensation exists, the Board has no more power to satisfy that obligation in advance by fixing a mail rate for the future than Congress had to fix the measure of compensation in the *Monongahela Navigation Case.*

When this Court held in the *Transcontinental & Western Air Case, supra,* that the Board did not have the power to award compensation for a past period because the mail rate provisions of the Act read "like a typical public utility rate-making authority" it was a clear holding that rate-fixing under those provisions was *not* the equivalent of just compensation.

The conventional regulation of the rates charged to the public by public utilities does not involve the principles of eminent domain. The Courts, in reviewing utility rates fixed for the future, are not concerned with whether or not the utility has received just compensation in the past, but only with the question whether the rate will probably yield a fair return in the *future* on an investment as it *presently* exists. *There is a difference between a non-confiscatory rate and just compensation for commandeered services.* A non-confiscatory *rate* may ignore past losses due to insufficiency of previous rates. *Georgia Railway & Power Co.* v. *Railroad Commission,* 262 U. S. 625. *Just compensation* may not ignore such past losses for it would be a contradiction in terms to say that he who has not been paid even the fair and reasonable cost of a compelled service has received just compensation. *The difference exists because the regulation of rates charged to the public is an exercise of the police power while the commandeering*

*of services required by the commerce of the United States, the Postal Service, and the national defense is an exercise of the power of eminent domain.* This Court said in *Block* v. *Hirsch* 256 U. S. 135, that under the doctrine of eminent domain, "what is taken is paid for", but that under the police power, "property rights may be cut down, and to that extent, *taken without pay.*"

Consequently, the Court of Claims was clearly in error when it ruled that it had no jurisdiction to consider the present claim for just compensation.

## Conclusion

The petition for a Writ of Certiorari should be granted.

CHARLES H. MURCHISON,
WILLIAM A. CARTER,
*Attorneys for Petitioner,*
*Capital Airlines, Inc.*

STOCKTON, ULMER & MURCHISON,
*Barnett Building, Jacksonville, Florida* and
*1016 Ring Building, Washington 6, D. C.*

*Of Counsel.*

# No. 280

## CIVIL AERONAUTICS ACT OF 1938[1]

[*Act of June 23, 1938, 52 Stat. 973; as amended by Act of July 2, 1940, 54 Stat. 735; Act of April 29, 1942, 56 Stat. 265; Act of May 16, 1942, 56 Stat. 300; Act of August 8, 1946, 60 Stat. 944; Act of July 25, 1947, 61 Stat. 449; Act of August 4, 1947, 61 Stat. 743; Act of June 16, 1948, 62 Stat. 470; Act of June 19, 1948, 62 Stat. 493; Act of June 29, 1948, 62 Stat. 1093; Act of July 1, 1948, 62 Stat. 1216.*]

AN ACT

To create a Civil Aeronautics Authority, and to promote the development and safety and to provide for the regulation of civil aeronautics.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Civil Aeronautics Act of 1938":

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[1] See Reorganization Plan III, Sec. 7, and Reorganization Plan IV, Sec. 7, post pp. 74 and 82; also footnotes 4 and 5, post p. 10.

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## TITLE I—GENERAL PROVISIONS

### DEFINITIONS

SECTION 1 [*52 Stat. 977, 49 U. S. C., 401*] As used in this Act, unless the context otherwise requires—

(1) "Aeronautics" means the science and art of flight.

(2) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Authority may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

(3) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any civil airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(4) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(5) "Aircraft engine" means an engine used, or intended to be

used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(6) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Authority may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(7) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(8) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(9) "Air-space reservation" means air space, identified by an area on the surface of the earth, in which the flight of aircraft is prohibited or restricted.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Authority" means the Civil Aeronautics Authority.

(13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(14) "Civil aircraft" means any aircraft other than a public aircraft.

(15) "Civil aircraft of the United States" means any aircraft registered as provided in this Act.

(16) "Civil airway" means a path through the navigable air space of the United States, identified by an area on the surface of the earth designated or approved by the Administrator as suitable for interstate, overseas, or foreign air commerce.

(17) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under

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which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given. (*As amended by Act of June 19, 1948, 62 Stat. 493.*)

(18) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(19) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in foreign air transportation.

(20) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the air space over any place outside thereof; or between places in the same Territory or possession (except the Philippine Islands) of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof, whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.[2]

(21) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of

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[2] This clause, "whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.", is indented here as in the enrolled bill. The bill as passed by the Senate, S. 3845, sets forth the definitions as they appear here except that clause in question was extended to the left-hand margin of the page so that it unquestionably applied to all three subdivisions immediately above. The conference committee, as shown by the text of the bill contained in the conference report, H. R. Rep. No. 2635, 75th Cong., 3d Sess., adopted the form of the Senate bill and Congress passed the bill as recommended by the conference committee, without change. Consequently, a typographical error must have been made in printing the enrolled bill.

Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the air space over any place outside thereof; or between places in the same Territory or possession (except the Philippine Islands) of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof, whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.[3]

(22) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(23) "Mail" means United States mail and foreign-transit mail.

(24) "Navigable air space" means air space above the minimum altitudes of flight prescribed by regulations issued under this Act.

(25) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(26) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this Act.

(27) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(28) "Propeller" includes all parts, appurtenances, and accessories thereof.

(29) "Possessions of the United States" means (a) Puerto Rico, notwithstanding the provisions of the Act of March 2, 1917, entitled "An Act to provide a civil government for Porto Rico", and any other Act or Acts which are inconsistent with the provisions of this Act; (b) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; (c) the Philippine Islands, except that the operation of civil aircraft within the jurisdiction of the Philippine Islands shall be governed by laws enacted by the legislature of the islands and by executive regulations designating air-space reservations or other prohibited areas; and (d) all other possessions of the United States.

(30) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of

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[3] See footnote 2 (p. 7).

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the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(31) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto. (*Added by Act of June 19, 1948, 62, Stat. 493.*)

(32) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof. (*Numbering changed by Act of June 19, 1948, 62 Stat. 493.*)

DECLARATION OF POLICY

SEC. 2 [*52 Stat. 980, 49 U. S. C. 402*] In the exercise and performance of its powers and duties under this Act, the Authority shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The regulation of air commerce in such manner as to best promote its development and safety; and

(f) The encouragement and development of civil aeronautics.

PUBLIC RIGHT OF TRANSIT

SEC. 3 [*52 Stat. 980, 49 U. S. C. 403*] There is hereby recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit in air commerce through the navigable air space of the United States.

## TITLE II—ORGANIZATION OF AUTHORITY

CREATION OF AUTHORITY

### Appointment of Members of Authority

SEC. 201 [*52 Stat. 980, 49 U. S. C. 421*] (a) An agency is created and established to be known as the "Civil Aeronautics Authority" which shall be composed of five members who shall be appointed by

the President, by and with the advice and consent of the Senate, as soon as practicable after the passage of this Act, and who shall continue in office as designated by the President at the time of nomination through the last day of the second, third, fourth, fifth, and sixth calendar years, respectively, following the passage of this Act. The President shall designate anually one of the members of the Authority as chairman and one of the members as vice chairman who shall act as chairman in the absence or incapacity of the chairman. The successors of the members shall be appointed for terms of six years in the same manner as the members originally appointed under this Act, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. The members of the Authority may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No more than three of the members shall be appointed from the same political party. Each member of the Authority shall receive a salary at the rate of $12,000 per annum.[4]

Administrator

(b) There shall be in the Authority an Administrator who shall be appointed by the President by and with the advice and consent of the Senate, and who shall receive a salary at the rate of $12,000 per annum.[5]

Qualifications of Members

(c) The members of the Authority shall be appointed with due regard to their fitness for the efficient dispatch of the powers and duties vested in and imposed upon the Authority by this Act. Each member of the Authority, and the Administrator, shall be a citizen of the United States, and no member of the Authority, or the Administrator, shall have any pecuniary interest in or own any stock in or bonds of any civil aeronautics enterprise. No member of the Authority, or the Administrator, shall engage in any other business, vocation, or employment.

Quorum, Principal Office, and Seal

(d) Three of the members shall constitute a quorum of the Authority. The principal office of the Authority shall be in the District of Columbia where its general sessions shall be held, but whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, the Authority may hold hearings or other proceedings at any other place. The Authority shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the secretary of the Authority.

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[4] By Act of June 28, 1941, 55 Stat. 282; 49 U. S. C. Supp. V, 422a, salaries were reduced to $10,000 per annum. The Act of June 3, 1948, 62 Stat. 305, provides that the salary of the Chairman of the Civil Aeronautics Board shall be $12,000 per annum and that of the Board Members $11,500 per annum.

[5] By Act of June 28, 1941, 55 Stat. 282; 49 U. S. C. Supp. V, 422a, salary was reduced to $10,000 per annum. The Act of June 25, 1948, 62 Stat. 1027, restores the salary of the Administrator to $12,000 per annum.

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ORGANIZATION OF AUTHORITY

## Officers and Employees

SEC. 202 [*52 Stat. 981, 49 U. S. C. 422*] (a) The Authority shall, without regard to the civil-service laws, appoint and prescribe the duties of a secretary of the Authority and a secretary for each member, and, subject to such noncompetitive tests of fitness as the Civil Service Commission may prescribe, appoint and prescribe the duties of a general counsel, a director for each Bureau, and such assistant directors and heads of divisions or sections as may be necessary. Subject to the provisions of the civil-service laws, the Authority shall employ such other officers and employees as it shall deem necessary in exercising and performing its powers and duties. The Administrator shall, without regard to the civil-service laws, appoint and prescribe the duties of a secretary, and, subject to the civil-service laws, appoint and prescribe the duties of such other officers and employees as he shall deem necessary in exercising and performing his powers and duties. The compensation of all officers and employees appointed by the Authority or by the Administrator under this subsection shall be fixed in accordance with the Classification Act of 1923, as amended.

## Temporary Personnel

(b) The Authority, and the Administrator, may, from time to time, without regard to the provisions of the civil-service laws, engage for temporary service such duly qualified consulting engineers or agencies, or other qualified persons as are necessary in the exercise and performance of the powers and duties of each, and fix the compensation of such engineers, agencies, or persons without regard to the Classification Act of 1923, as amended, and the expenses of such employment shall be paid out of the appropriation for the administration of this Act.

PERSONNEL, PROPERTY, AND APPROPRIATIONS

## Personnel and Property

SEC. 203 [*52 Stat. 982, 49 U. S. C. 423*] (a) Such officers and employees of the Bureau of Air Mail of the Interstate Commerce Commission and of the Bureau of Air Comerce of the Department of Commerce, and such property (including office equipment and official records), as the President shall determine to have been employed by the Secretary of Commerce in the exercise and performance of the powers and duties vested in and imposed upon him by the Air Commerce Act of 1926, as amended (44 Stat. 568; U. S. C., 1934 ed., title 49, sec. 171 et seq.), and by the Secretary of Commerce and the Interstate Commerce Commission in the exercise and performance of the powers and duties vested in and imposed upon them by the Air Mail Act of 1934, approved June 12, 1934, as amended (48 Stat. 933; U. S. C. 1934 ed., Supp. II, title 39, sec. 469 et seq.), are transferred to the Authority upon such date or dates as the President shall specify by Executive order: *Provided*, That the transfer of such personnel shall be without reduction in classification or compensation, except that this requirement shall not operate after the end of the fiscal year during which such transfer is made to prevent the adjustment of classification

or compensation to conform to the duties to which such transferred personnel may be assigned: *Provided further*, That such of the personnel so transferred as do not already possess a classified civil-service status shall not acquire such status by reason of such transfer except (1) upon recommendation of the Authority within one year after such personnel have been so transferred and certification within such period by the Authority to the Civil Service Commission that such personnel have served with merit for not less than six months prior to the transfer, and (2) upon passing such suitable noncompetitive examinations as the Civil Service Commission may prescribe: *And provided further*, That no officer or employee taking such examination shall be discharged or reduced in grade or compensation pending the result thereof, except for cause in the manner provided by law.

### Appropriations

(b) Such of the unexpended balances of appropriations available for use by the Secretary of Commerce in the exercise and performance of the powers and duties vested in and imposed upon him by the Air Commerce Act of 1926, as amended, and by the Secretary of Commerce and the Interstate Commerce Commission in the exercise and performance of the powers and duties vested in and imposed upon them by the Air Mail Act of 1934, approved June 12, 1934, as amended, as the President shall deem necessary and specify by Executive order, are transferred to the Authority upon such date or dates as the President shall specify by Executive order, and shall be available for use in connection with the exercise and performance of the powers and duties vested in and imposed upon the Authority, the Administrator, and the Air Safety Board by this Act.

## AUTHORIZATION OF EXPENDITURES AND TRAVEL

### General Authority

SEC. 204 [*52 Stat. 983, 49 U. S. C. 424*] (a) The Authority is empowered to make such expenditures at the seat of government and elsewhere as may be necessary for the exercise and performance of the powers and duties vested in and imposed upon the Authority, the Administrator, and the Air Safety Board by law, and as from time to time may be appropriated for by Congress, including expenditures for (1) rent and personal services at the seat of government and elsewhere; (2) travel expenses; (3) office furniture, equipment and supplies, lawbooks, newspapers, periodicals, and books of reference (including the exchange thereof); (4) printing and binding; (5) membership in and cooperation with such organizations as are related to, or are part of, the civil-aeronautics industry or the art of aeronautics in the United States or in any foreign country; (6) attendance at meetings and conventions when in the public interest; (7) making investigations and conducting studies in matters pertaining to aeronautics; and (8) acquisition (including exchange), operation, and maintenance of passenger-carrying automobiles and aircraft, and such other property as is necessary in the exercise and performance of the powers and duties of the Authority, the Administrator, and the Air Safety Board: *Provided*, That no aircraft or

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motor vehicle, purchased under the provisions of this section, shall be used otherwise than for official business. The Authority may include, among expenditures for travel, reasonable expenditures for transportation between airports and centers of population whether or not such transportation is incidental to travel by aircraft.

### Purchase of Aircraft

(b) The Authority, within the limits of appropriations made available by Congress, may purchase and exchange modern aircraft, completely equipped in such manner that such aircraft can be used in testing and checking every phase of flight operation; and may purchase and exchange for the use of the Administrator and the Air Safety Board modern aircraft similar to aircraft used or suitable for use in air transportation, completely equipped in such manner that they can be used in testing and checking every phase of flight operation encountered in air transportation. The Authority is authorized to obtain necessary space, facilities, and personnel for the storage, maintenance, operation, and navigation of such aircraft.

### Travel

(c) Travel by personnel of the United States Government on commercial aircraft, domestic or foreign, including travel between airports and centers of population or posts of duty when incidental to travel on commercial aircraft, shall be allowed at public expense when authorized or approved by competent authority, and transportation requests for such travel may be issued upon such authorizations. Such expense shall be allowed without regard to comparative costs of transportation by aircraft with other modes of transportation.

## GENERAL POWERS AND DUTIES OF THE AUTHORITY

### General Powers

SEC. 205 [*52 Stat. 984, 49 U. S. C. 425*] (a) The Authority is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out such provisions and to exercise and perform its powers and duties under this Act.

### Cooperation With State Aeronautical Agencies

(b) The Authority is empowered to confer with or to hold joint hearings with any State aeronautical agency, or other State agency, in connection with any matter arising under this Act, and to avail itself of the cooperation, services, records, and facilities of such State agencies as fully as may be practicable in the administration and enforcement of this Act.

### Exchange of Information

(c) The Authority is empowered to exchange with foreign governments, through appropriate agencies of the United States, information pertaining to aeronautics.

### Publications

(d) Except as may be otherwise provided in this Act, the Authority shall make a report in writing in all proceedings and investigations under this Act in which formal hearings have been held, and shall state in such report its conclusions together with its decision, order, or requirement in the premises. All such reports shall be entered of record and a copy thereof shall be furnished to all parties to the proceeding or investigation. The Authority shall provide for the publication of such reports, and all other reports, orders, decisions, rules, and regulations issued by it under this Act in such form and manner as may be best adapted for public information and use. Publications purporting to be published by the Authority shall be competent evidence of the orders, decisions, rules, regulations, and reports of the Authority therein contained in all courts of the United States, and of the several States, Territories, and possessions thereof, and the District of Columbia, without further proof or authentication thereof.

#### ANNUAL REPORT

SEC. 206 [*52 Stat. 984, 49 U. S. C. 426*] The Authority shall make an annual report to the Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain in addition to a report of the work performed under this Act, such information and data collected by the Authority, the Administrator, and the Air Safety Board as may be considered of value in the determination of questions connected with the development and regulation of civil aeronautics, together with such recommendations as to additional legislation relating thereto as the Authority may deem necessary. The Authority may also transmit recommendations as to such additional legislation more frequently.

## TITLE III—POWERS AND DUTIES OF ADMINISTRATOR

#### FOSTERING OF AIR COMMERCE

SEC. 301 [*52 Stat. 985, 49 U. S. C. 451*] The Administrator is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States, and abroad, and to encourage the establishment of civil airways, landing areas, and other air navigation facilities. The Administrator and the Air Safety Board shall cooperate with the Authority in the administration and enforcement of this Act.

#### CIVIL AIRWAYS AND FACILITIES

##### General

SEC. 302 [*52 Stat. 985, 49 U. S. C. 452*] (a) The Administrator is authorized and directed to designate and establish such civil airways as may be required in the public interest. The Administrator is authorized, within the limits of available appropriations made by the Congress, (1) to acquire, establish, and improve air-navigation facilities wherever necessary; (2) to operate and maintain such air-

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navigation facilities; (3) to arrange for publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in civil air navigation utilizing the facilities and assistance of existing agencies of the Government so far as practicable; and (4) to provide necessary facilities and personnel for the regulation and protection of air traffic. In exercising the authority granted in this subsection, the Administrator shall give full consideration to the requirements of National Defense. (*As amended by Act of July 1, 1948, 62 Stat. 1216.*)

Method of Establishment

(b) The Administrator shall insofar as practicable designate and establish civil airways with relation to visual, mechanical, electrical, radio, or other like aids along the ground for air navigation, and in such manner that not more than one airway shall embrace the same air space, except to the extent necessary for intersection of airways at landing areas or elsewhere, or except when such action is necessary in the interest of safety or efficient operation of aircraft, or when the operation of aircraft over one airway will not interfere with the operation of aircraft over another airway embracing the same air space: *Provided*, That nothing herein shall be construed to affect the promulgation or enforcement of any rules and regulations under this Act for the control of traffic.

ACQUISITION AND DISPOSAL OF PROPERTY

(c) The Administrator, on behalf of the United States, is authorized, where appropriate to carry out this section, (1) to accept any conditional or unconditional gift or donation of money or other property, real or personal, or of services; (2) within the limits of available appropriations made by the Congress therefor, to acquire by purchase, condemnation, lease, or otherwise, real property or interests therein, including, in the case of air-navigation facilities (including airports) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and needed in connection therewith; and (3) for adequate compensation, by sale, lease, or otherwise, to dispose of any real or personal property or interests therein, so acquired. Any such acquisition by condemnation may be made in accordance with the provisions of the Act of August 1, 1888 (40 U. S. C. 257; 25 Stat. 357), the Act of February 26, 1931 (40 U. S. C. 258a–258e; 46 Stat. 1421), or any other applicable Act of Congress: *Provided*, That in the case of condemnations of easements through or other interests in airspace, in fixing condemnation awards, consideration may be given to the reasonable probable future use of the underlying land. (*As amended by Act of July 1, 1948, 62 Stat. 1216.*)

(d) (1) The Administrator is authorized, within the limits of available appropriations made by the Congress, to train civilian and governmental air-traffic control-tower operators or to conduct programs for such training, including studies and researches as to the most desirable qualifications for air-traffic control-tower operators. Such training or programs shall be conducted pursuant to such regulations as the Administrator may from time to time prescribe, including such fees as the Administrator may deem necessary or desirable.

Such training or programs may be carried out by the Administrator either through the use of his own facilities and personnel or by contracts with educational institutions, or other persons.

(2) The Administrator is authorized to lease or accept loans of such real property, and to purchase, lease, exchange, or accept loans of such personal property and facilities, and to repair, maintain, and operate such property and such facilities, as may be necessary or desirable for carrying out the provisions of this section.

(3) For the purpose of carrying out his functions under this section, the Administrator is authorized to exercise all powers conferred upon him by any other provisions of this Act and to appoint and fix the compensation for instructors, airmen, medical and other professional examiners, and experts in training or research without regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended. The provisions of section 3709 of the Revised Statutes shall not apply to contracts with educational institutions and other persons for the use of aircraft, control towers, or other facilities or for the performance of services authorized by this section.

(4) Any executive department or independent establishment is hereby authorized to cooperate with the Administrator in carrying out the purposes of this section, and for such purposes may lend or transfer to the Administrator, by contract or otherwise, or if so requested by the Administrator, lend to educational institutions or other persons cooperating with the Administrator in the conduct of any such training or program, officials, experts, or employees, aircraft, control towers and other property or equipment, and lands or buildings under its control. For the purposes of this section, the Administrator shall have the power to accept and utilize voluntary and uncompensated services, equipment, facilities, and information of any State, Territory, or political subdivision, or any agency thereof.

(5) Any executive department or independent establishment is hereby authorized to detail personnel of such executive department or independent establishment to be trained as provided herein at Government expense: *Provided*, That no such personnel shall lose their individual status or seniority rating in the executive department or independent establishment merely by reason of absence due to such training.

(6) There are hereby authorized to be appropriated such sums as may be necessary for the purpose of carrying out the provisions of this section.

(d) *added by Act of June 29, 1948, 62 Stat. 1093.*)

EXPENDITURE OF FEDERAL FUNDS

SEC. 303 [*52 Stat. 986, 49 U. S. C., 453*] No Federal funds, other than those expended under this Act, shall be expended, other than for military purposes (whether or not in cooperation with State or other local governmental agencies), for the acquisition, establishment, construction, alteration, repair, maintenance, or operation of any landing area, or for the acquisition, establishment, construction, maintenance, or operation of air navigation facilities thereon, except upon written recommendation and certification by the Administrator, made after consultation with the Authority, that such landing area, or facility is reasonably necessary for use in air commerce or in the interests of national defense. Any interested person may apply to the Admin-

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istrator, under regulations prescribed by him, for such recommendation and certification with respect to any landing area or air navigation facility proposed to be established, constructed, altered, repaired, maintained, or operated by, or in the interests of, such person. There shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended.

METEOROLOGICAL SERVICE

SEC. 304 [*52 Stat. 986, 49 U. S. C. 454*] The Administrator is empowered and directed to make recommendations to the Secretary of Agriculture for providing meteorological service necessary for the safe and efficient movement of aircraft in air commerce.

DEVELOPMENT OF FACILITIES

SEC 305 [*52 Stat. 986, 49 U. S. C. 455*] The Administrator is empowered to undertake or supervise such developmental work and service testing as tends to the creation of improved air navigation facilities, aircraft, aircraft engines, propellers, and appliances. For such purpose, the Administrator is empowered, subject to the approval of the Authority, to make purchases (including exchange) by negotiation or otherwise of experimental aircraft, aircraft engines, propellers, appliances, air navigation facilities, and radio apparatus, which seem to offer special advantages to aeronautics.

COLLECTION AND DISSEMINATION OF INFORMATION

SEC. 306 [*52 Stat. 986, 49 U. S. C. 456*] The Administrator is empowered and directed to collect and disseminate information relative to civil aeronautics (other than information collected and disseminated by the Authority under titles IV and VI of this Act and by the Air Safety Board); to study the possibilities of the development of air commerce and the aeronautical industry; and to exchange with foreign governments, through appropriate governmental channels, information pertaining to civil aeronautics.

DEVELOPMENT PLANNING

SEC. 307 [*52 Stat. 986, 49 U. S. C. 457*] The Administrator is empowered and directed to make plans for such orderly development and location of landing areas, airways, and all other aids and facilities for air navigation, as will best meet the needs of, and serve the interest of safety in, civil aeronautics.

OTHER DUTIES OF ADMINISTRATOR

SEC. 308 [*52 Stat. 986, 49 U. S. C. 458*] The Administrator shall exercise and perform the powers and duties vested in and imposed upon him by this Act, and such powers and duties vested in and imposed upon the Authority by this Act (except the powers under sections 202, 203, 204, and 206, and the powers and duties under titles IV and VI) as may, from time to time, be assigned to him by the Authority; and shall so exercise and perform his powers and duties as best to effectuate the policies declared in, and the purposes of, this Act. The Authority may request the Administrator to make reports to it of his work under this Act.

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POWER TO CONDUCT HEARINGS AND INVESTIGATIONS

SEC. 309. In the conduct of any public hearings or investigations authorized by this Act or by the Federal Airport Act, the Administrator or any duly designated examiner shall have the same powers to take evidence, issue subpenas, take depositions, and compel testimony as are vested in members of the Board and its duly designated examiners by section 1004 of this Act. Actions of the Administrator, or his examiners in such cases shall be governed by the procedures specified in section 1004, and be enforced in the manner provided therein. (*Added by Act of July 1, 1948, 62 Stat. 1216.*)

## TITLE IV—AIR CARRIER ECONOMIC REGULATION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

### Certificate Required

SEC. 401[*52 Stat. 987, 49 U. S. C. 481*] (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority authorizing such air carrier to engage in such transportation: *Provided*, That if an air carrier is engaged in such transportation on the date of the enactment of this Act, such air carrier may continue so to engage between the same terminal and intermediate points for one hundred and twenty days after said date, and thereafter until such time as the Authority shall pass upon an application for a certificate for such transportation if within said one hundred and twenty days such air carrier files such application as provided herein.

### Application for Certificate

(b) Application for a certificate shall be made in writing to the Authority and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Authority shall by regulation require.

### Notice of Application

(c) Upon the filing of any such application, the Authority shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Authority and to such other persons as the Authority may by regulation determine. Any interested person may file with the Authority a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Authority shall dispose of such application as speedily as possible.

### Issuance of Certificate

(d) (1) The Authority shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

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(2) In the case of an application for a certificate to engage in temporary air transportation, the Authority may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder.

Existing Air Carriers

(e) (1) If any applicant who makes application for a certificate within one hundred and twenty days after the date of enactment of this Act shall show that, from May 14, 1938, until the effective date of this section, it, or its predecessor in interest, was an air carrier, continuously operating as such (except as to interruptions of service over which the applicant or its predecessor in interest had no control), the Authority, upon proof of such fact only, shall, unless the service rendered by such applicant for such period was inadequate and inefficient, issue a certificate or certificates, authorizing such applicant to engage in air transportation (A) with respect to all classes of traffic for which authorization is sought, except mail, between the terminal and intermediate points between which it, or its predecessor, so continuously operated between May 18, 1938, and the effective date of this section, and (B) with respect to mail and all other classes of traffic for which authorization is sought, between the terminal and intermediate points between which the applicant or its predecessor was authorized by the Postmaster General prior to the effective date of this section, to engage in the transportation of mail: *Provided*, That no applicant holding an air-mail contract shall receive a certificate authorizing it to serve any point not named in such contract as awarded to it and not served by it prior to April 1, 1938, if any other air carrier competitively serving the same point under authority of a contract as awarded to such air carrier shall prove that it is adversely affected thereby, and if the Authority shall also find that transportation by the applicant to and from such point is not required by the public convenience and necessity.

(2) If paragraph (1) of this subsection does not authorize the issuance of a certificate authorizing the transportation of mail between each of the points between which air-mail service was provided for by the Act of Congress making appropriations for the Treasury Department and the Post Office Department, approved March 28, 1938, the Authority shall, notwithstanding any other provision of this Act, issue certificates authorizing the transportation of mail, and all other classes of traffic for which authorization is sought, between such points, namely, (A) from Wichita, Kansas, to Pueblo, Colorado, via intermediate cities; (B) from Bismarck, North Dakota, to Minot, North Dakota; (C) from Detroit, Michigan, to Sault Sainte Marie, Michigan, via intermediate cities; (D) from Brownsville, Texas, via Corpus Christi, to Houston to San Antonio, Texas; (E) from Phoenix, Arizona, to Las Vegas, Nevada, via intermediate cities; (F) from Jacksonville, Florida, to New Orleans, Louisiana, via intermediate cities; (G) from Tampa, Florida, to Memphis, Tennessee, via intermediate cities, and from Tampa, Florida, to Atlanta, Georgia, via intermediate cities (which projects have been

advertised); and (H) by extension from Yakima, Washington, to Portland, Oregon; and (I) by extension from Grand Rapids, Michigan, to Chicago, Illinois.

Terms and Conditions of Certificate

(f) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Authority shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Authority, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Authority.

Effective Date and Duration of Certificate

(g) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Authority shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d) (2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Authority shall certify that operations thereunder have ceased: *Provided*, That if any service authorized by a certificate is not inaugurated within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Authority, or if, for a period of ninety days or such other period as may be designated by the Authority, any such service is not operated, the Authority may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

Authority to Modify, Suspend, or Revoke

(h) The Authority, upon petition or complaint or upon its own initiative, after notice and hearing, may alter, amend, modify, or

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suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided*, That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Authority, with an order of the Authority commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Authority to have been violated. Any interested person may file with the Authority a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of a certificate.

Transfer of Certificate

(i) No certificate may be transferred unless such transfer is approved by the Authority as being consistent with the public interest.

Certain Rights Not Conferred by Certificate

(j) No certificate shall confer any proprietary, property, or exclusive right in the use of any air space, civil airway, landing area, or air-navigation facility.

Application for Abandonment

(k) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Authority, unless, upon the application of such air carrier, after notice and hearing, the Authority shall find such abandonment to be in the public interest. Any interested person may file with the Authority a protest or memorandum of opposition to or in support of any such abandonment. The Authority may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest.

Compliance With Labor Legislation

(l) (1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.[6]

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

[6] Para. (1) of Sec. 401 (l) was amended by act of April 29, 1942, 56 Stat. 265. The amendment was repealed by Act of July 25, 1947, 61 Stat. 449.

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including take-off and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

### Requirement as to Carriage of Mail

(m) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

### Application for New Mail Service

(n) Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Authority and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Authority. The Authority shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such additional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

## PERMITS TO FOREIGN AIR CARRIERS

### Permit Required

SEC. 402 [*52 Stat. 991, 49 U. S. C. 482*] (a) No foreign air carrier shall engage in foreign air transportation unless there is in force a permit issued by the Authority authorizing such carrier so to engage: *Provided*, That if any foreign air carrier is engaged in such transportation on the date of the enactment of this Act, such carrier may continue so to engage between the same terminal and intermediate points for one hundred and twenty days after said date, and thereafter until such time as the Authority shall pass upon an application for a permit for such transportation if within said one hundred and twenty days such carrier files such application as provided in this section.

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Issuance of Permit

(b) The Authority is empowered to issue such a permit if it finds that such carrier is fit, willing, and able properly to perform such air transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder, and that such transportation will be in the public interest.

Existing Permits

(c) Any such carrier who holds a permit issued by the Secretary of Commerce under section 6 of the Air Commerce Act of 1926, as amended, which was in effect on May 14, 1938, and which authorizes such carrier to operate between any foreign country and the United States, shall be entitled to receive a permit under this section upon proof of that fact only.

Application for Permit

(d) Application for a permit shall be made in writing to the Authority, shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Authority shall by regulation require.

Notice of Application

(e) Upon the filing of an application for a permit the Authority shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Authority and to such other persons as the Authority may by regulation determine. Any interested person may file with the Authority a protest or memorandum of opposition to or in support of the issuance of a permit. Such application shall be set for public hearing and the Authority shall dispose of such applications as speedily as possible.

Terms and Conditions of Permit

(f) The Authority may prescribe the duration of any permit and may attach to such permit such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require.

Authority to Modify, Suspend, or Revoke

(g) Any permit issued under the provisions of this section may, after notice and hearing, be altered, modified, amended, suspended, canceled, or revoked by the Authority whenever it finds such action to be in the public interest. Any interested person may file with the Authority a protest or memorandum in support of or in opposition to the alteration, modification, amendment, suspension, cancelation, or revocation of a permit.

Transfer of Permit

(h) No permit may be transferred unless such transfer is approved by the Authority as being in the public interest.

TARIFFS OF AIR CARRIERS

## Filing of Tariffs Required

SEC. 403 [*52 Stat. 992, 49 U. S. C. 483*] (a) Every air carrier and every foreign air carrier shall file with the Authority, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier when through service and through rates shall have been established, and showing to the extent required by regulations of the Authority, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Authority shall by regulation prescribe; and the Authority is empowered to reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void. The rates, fares, and charges shown in any tariff shall be stated in terms of lawful money of the United States, but such tariffs may also state rates, fares, and charges in terms of currencies other than lawful money of the United States, and may, in the case of foreign air transportation, contain such information as may be required under the laws of any country in or to which an air carrier or foreign air carrier is authorized to operate.

## Observance of Tariffs; Rebating Prohibited

(b) No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Authority to be specified in such tariffs, except those specified therein. Nothing in this Act shall prohibit such air carriers or foreign air carriers, under such terms and conditions as the Authority may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to their directors, officers, and employees and their immediate families; witnesses and attorneys attending any legal investigation in which any such air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; and any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; and, in the case of overseas or foreign air transportation, to such other persons and under such other circumstances as the Authority may by regulations prescribe.

## Notice of Tariff Change

(c) No change shall be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any air carrier or foreign air carrier, except after

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thirty days' notice of the proposed change filed, posted, and published in accordance with subsection (a) of this section. Such notice shall plainly state the change proposed to be made and the time such change will take effect. The Authority may in the public interest, by regulation or otherwise, allow such change upon notice less than that herein specified, or modify the requirements of this section with respect to filing and posting of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

### Filing of Divisions of Rates and Charges Required

(d) Every air carrier or foreign air carrier shall keep currently on file with the Authority, if the Authority so requires, the established divisions of all joint rates, fares, and charges for air transportation in which such air carrier or foreign air carrier participates.

## RATES FOR CARRIAGE OF PERSONS AND PROPERTY

### Carrier's Duty to Provide Service, Rates, and Divisions

SEC. 404 [*52 Stat. 993, 49 U. S. C. 484*] (a) It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor and to provide reasonable through service in such air transportation in connection with other air carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to such air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

### Discrimination

(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

### Foreign Rate Study

(c) The Authority is empowered and directed to investigate and report to the Congress within one year from the effective date of this section, to what extent, if any, the Federal Government should further regulate the rates, fares, and charges of air carriers engaged in foreign air transportation, and the classifications, rules, regulations, and practices affecting such rates, fares, or charges.

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Continuation and Termination of Mail Contracts

SEC. 405 [*52 Stat. 994, 49 U. S. C. 485*] (a) Each contract between the United States and any person for the carriage of mail, entered into or continued under the provisions of the Air Mail Act of 1934, as amended, and each contract for the carriage of mail by aircraft in Alaska, shall be continued in effect until canceled in accordance with this subsection. Each such contract shall be canceled upon the issuance to the holder of such contract of a certificate of public convenience and necessity authorizing the transportation of mail by aircraft between the points covered by such contract, or upon the failure of the holder of such contract to apply for such certificate within one hundred and twenty days after the date of enactment of this act, or upon a determination by the Authority that such certificate should not be issued. Until the Authority fixes rates under section 406 of this Act, the Postmaster General shall pay compensation for the transportation of mail by aircraft at the rates provided by each such contract or, where rates have been heretofore or shall hereafter be fixed by orders of the Interstate Commerce Commission, pursuant to proceedings instituted prior to the date of enactment of this Act, shall pay compensation for such transportation in accordance with such orders as if this Act had not been enacted.

Continuation and Termination of Foreign Mail Contracts

(b) Each contract between the United States and any person heretofore entered into under the provisions of the Act of March 8, 1928, as amended (45 Stat. 248), shall be continued in effect until canceled in accordance with this subsection. Each such contract shall be canceled upon the issuance of a certificate of public convenience and necessity to the holder of such contract authorizing the transportation of mail by aircraft between the points covered by such contract, or upon the effective date of any order of the Authority hereunder fixing a fair and reasonable rate of compensation for the transportation of mail by aircraft between the points covered by such contract, whichever is later, or upon the failure of the holder of such contract to apply for such certificate within one hundred and twenty days after the date of enactment of this Act, or upon a determination by the Authority that such certificate should not be issued.

Termination of Bonds

(c) Upon the cancellation, pursuant to the provisions of this Act, of any contract for the transportation of mail by aircraft, the bond or bonds required from the holder thereof shall terminate and cease to be effective, and such holder and his or its surety or sureties thereon shall be released and discharged from all obligations thereunder, and all securities deposited with such bond or bonds shall forthwith be returned to such holder: *Provided*, That the foregoing provision shall not be construed to terminate or make ineffective any bond or bonds of such holder, or to release or discharge from any obligation thereunder such holder or his or its surety or sureties thereon, in respect of any matter arising prior to the date of the

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cancellation of such contract, and such holder or his or its surety or sureties thereon shall not be released or discharged prior to disposition of any such matter: *Provided further*, That nothing in this Act shall be construed to affect any right which may have accrued to any air carrier prior to the date of the cancellation, pursuant to the provisions of this Act, of any contract for the transportation of mail by aircraft.

Rules and Regulations

(d) The Postmaster General is authorized to make such rules and regulations, not inconsistent with the provisions of this Act, or any order, rule, or regulation made by the Authority thereunder, as may be necessary for the safe and expeditious carriage of mail by aircraft.

Mail Schedules

(e) Each air carrier shall, from time to time, file with the Authority and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules, and all changes therein, of aircraft regularly operated by the carrier between such points, setting forth in respect of each such schedule the points served thereby and the time of arrival and departure at each such point. The Postmaster General may designate any such schedule for the transportation of mail between the points between which the air carrier is authorized by its certificate to transport mail, and may, by order, require the air carrier to establish additional schedules for the transportation of mail between such points. No change shall be made in any schedules designated or ordered to be established by the Postmaster General except upon ten days' notice thereof filed as herein provided. The Postmaster General may by order disapprove any such change or alter, amend, or modify any such schedule or change. No order of the Postmaster General under this subsection shall become effective until ten days after its issuance. Any person who would be aggrieved by any such order of the Postmaster General under this subsection may, before the expiration of such ten-day period, apply to the Authority, under such regulations as it may prescribe, for a review of such order. The Authority may review, and, if the public convenience and necessity so require, amend, revise, suspend, or cancel such order; and, pending such review and the determination thereof, may postpone the effective date of such order. The Authority shall give preference to proceedings under this subsection over all proceedings pending before it. No air carrier shall transport mail in accordance with any schedule other than a schedule designated or ordered to be established under this subsection for the transportation of mail.

Maximum Mail Load

(f) The Authority may fix the maximum mail load for any schedule or for any aircraft or any type of aircraft; but, in the event that mail in excess of the maximum load is tendered by the Postmaster General for transportation by any air carrier in accordance with any schedule designated or ordered to be established by the Postmaster General under subsection (e) of this section for the transportation of mail, such air carrier shall, to the extent such air carrier is reasonably

able as determined by the Authority, furnish facilities sufficient to transport, and shall transport, such mail as nearly in accordance with such schedule as the Authority shall determine to be possible.

Tender of Mail

(g) From and after the issuance of any certificate authorizing the transportation of mail by aircraft, the Postmaster General shall tender mail to the holder thereof, to the extent required by the Postal Service, for transportation between the points named in such certificate for the transportation of mail, and such mail shall be transported by the air carrier holding such certificate in accordance with such rules, regulations, and requirements as may be promulgated by the Postmaster General under this section.

Foreign Postal Arrangements

(h) (1) Nothing in this Act shall be deemed to abrogate or affect any arrangement made by the United States with the postal administration of any foreign country with respect to transportation of mail by aircraft, or to impair the authority of the Postmaster General to enter into any such arrangement with the postal administration of any foreign country.

(2) The Postmaster General may, in any case where service may be necessary by a person not a citizen of the United States who may not be obligated to transport the mail for a foreign country, make arrangements, without advertising, with such person for transporting mail by aircraft to or within any foreign country.

Transportation of Foreign Mail

(i) (1) Any air carrier holding a certificate to engage in foreign air transportation and transporting mails of foreign countries shall transport such mails subject to control and regulation by the United States. The Postmaster General shall from time to time fix the rates of compensation that shall be charged the respective foreign countries for the transportation of their mails by such air carriers, and such rates shall be put into effect by the Postmaster General in accordance with the provisions of the postal convention regulating the postal relations between the United States and the respective foreign countries, or as provided hereinafter in this subsection. In any case where the Postmaster General deems such action to be in the public interest, he may approve rates provided in arrangements between any such air carrier and any foreign country covering the transportation of mails of such country, under which mails of such country have been carried on scheduled operations prior to January 1, 1938, or in extensions or modifications of such arrangements, and may permit any such air carrier to enter into arrangements with any foreign country for the transportation of its mails at rates fixed by the Postmaster General in advance of the making of any such arrangement. The Postmaster General may authorize any such air carrier, under such limitations as the Postmaster General may prescribe, to change the rates to be charged any foreign country for the transportation of its mails by such air carrier within that country or between that country and another foreign country.

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(2) In any case where such air carrier has an arrangement with any foreign country for transporting its mails, made or approved in accordance with the provisions of subdivision (1) of this subsection, it shall collect its compensation from the foreign country under its arrangement, and in case of the absence of any arrangement between the air carrier and the foreign country consistent with this subsection, the collections made from the foreign country by the United States shall be for the account of such air carrier: *Provided*, That no such air carrier shall be entitled to receive compensation both from such foreign country and from the United States in respect of the transportation of the same mail or the same mails of foreign countries.

(3) In the case of any air carrier holding a contract under the provisions of the Act of March 8, 1928, as amended (45 Stat. 248), providing for the carriage of mails of foreign countries for the account of the United States, this subsection shall apply only upon the cancellation of such contract as provided in this section.

Evidence of Performance of Mail Service

(j) Air carriers transporting or handling United States mail shall submit, under oath, when and in such form as may be required by the Postmaster General, evidence of the performance of mail service: and air carriers transporting or handling mails of foreign countries shall submit, under oath, when and in such form as may be required by the Postmaster General, evidence of the amount of such mails transported or handled, and the compensation payable and received therefor.

Emergency Mail Service

(k) In the event of emergency caused by flood, fire, or other calamitous visitation, the Postmaster General is authorized to contract, without advertising, for the transportation by aircraft of any or all classes of mail to or from localities affected by such calamity, where available facilities of persons authorized to transport mail to or from such localities are inadequate to meet the requirements of the Postal Service during such emergency. Such contracts may be only for such periods as may be necessitated, for the maintenance of mail service, by the inadequacy of such other facilities. No operation pursuant to any such contract, for such period, shall be air transportation within the purview of this Act. Payment of compensation for service performed under such contracts shall be made, at rates provided in such contracts, from appropriations for the transportation of mail by the means normally used for transporting the mail transported under such contracts.

Experimental Air-Mail Service

(l) Nothing contained in this Act shall be construed to repeal in whole or in part the provisions of section 6 of the Act entitled "An Act to provide for experimental air-mail service, to further develop safety, efficiency, economy, and for other purposes", approved April 15, 1938. The transportation of mail under contracts entered into under such section shall not, except for sections 401 (l) and 416 (b), be deemed to be "air transportation" as used in this Act, and the rates of compensation for such transportation of mail shall not

be fixed under this Act. (*As amended by Act of July 2, 1940, 54 Stat. 735.*)

### Free Travel for Postal Employees

(m) Every air carrier carrying the mails shall carry on any plane that it operates and without charge therefor, the persons in charge of the mails when on duty, and such duly accredited agents and officers of the Post Office Department, and post office inspectors, while traveling on official business relating to the transportation of mail by aircraft, as the Authority may by regulation prescribe, upon the exhibition of their credentials.

## RATES FOR TRANSPORTATION OF MAIL

### Authority to Fix Rates

SEC. 406 [*52 Stat. 998, 49 U. S. C. 486*] (a) The Authority is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof. or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same; and the rates so fixed and determined shall be paid by the Postmaster General from appropriations for the transportation of mail by aircraft.

### Rate-Making Elements

(b) In fixing and determining fair and reasonable rates of compensation under this section, the Authority, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Authority shall take into consideration, among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation[1] of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue

[1] So in original.

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of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

Statement of Postmaster General and Carrier

(c) Any petition for the fixing of fair and reasonable rates of compensation under this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under this section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as may be deemed by the Authority to be material to the inquiry.

Weighing of Mail

(d) The Postmaster General may weigh the mail transported by aircraft and make such computations for statistical and administrative purposes as may be required in the interest of the mail service. The Postmaster General is authorized to employ such clerical and other assistance as may be required in connection with proceedings under this Act. If the Authority shall determine that it is necessary or advisable, in order to carry out the provisions of this Act, to have additional and more frequent weighing of the mails, the Postmaster General, upon request of the authority, shall provide therefor in like manner, but such weighing need not be for continuous periods of more than thirty days.

Availability of Appropriations

(e) Except as otherwise provided in section 405 (k), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Air Mail Act of 1934, as amended, and the unexpended balances of all appropriations available for the transportation of mail by aircraft in Alaska, shall be available, in addition to the purposes stated in such appropriations, for the payment of compensation by the Postmaster General, as provided in this Act, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the continental United States or between points in Hawaii or in Alaska or between points in the continental United States and points in Canada within one hundred and fifty miles of the international boundary line. Except as otherwise provided in section 405 (k), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Act of March 8, 1928, as amended, shall be available, in addition to the purposes stated in such appropriations, for payment to be made by the Postmaster General, as provided by this Act, in respect of the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the United States and points outside thereof, or between points in the continental United States and Territories or possessions of the United States, or between Territories or possessions of the United States.

### Payments to Foreign Air Carriers

(f) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this title and by aircraft owned or operated by one or more foreign air carriers, the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country, which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such foreign air carrier receiving a higher rate of compensation for transporting such mail than such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and the United States, or receiving a higher rate of compensation for transporting such mail than a rate determined by the Postmaster General to be comparable to the rate such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and an intermediate country on the route of such air carrier between such foreign country and the United States.

## ACCOUNTS, RECORDS, AND REPORTS

### Filing of Reports

SEC. 407 [*52 Stat. 1000, 49 U. S. C. 487*] (a) The Authority is empowered to require annual, monthly, periodical, and special reports from any air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier specific answers to all questions upon which the Authority may deem information to be necessary. Such reports shall be under oath whenever the Authority so requires. The Authority may also require any air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act.

### Disclosure of Stock Ownership

(b) Each air carrier shall submit annually, and at such other times as the Authority shall require, a list showing the names of each of its stockholders or members holding more than 5 per centum of the entire capital stock or capital, as the case may be, of such air carrier, together with the name of any person for whose account, if other than the holder, such stock is held; and a report setting forth a description of the shares of stock, or other interest, held by such air carrier, or for its account, in persons other than itself.

### Disclosure of Stock Ownership by Officer or Director

(c) Each officer and director of an air carrier shall annually and at such other times as the Authority shall require transmit to the Authority a report describing the shares of stock or other interests held by him in any air carrier, any person engaged in any phase of aeronautics, or any common carrier, and in any person whose principal

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business, in purpose or in fact, is the holding of stock in, or control of, air carriers, other persons engaged in any phase of aeronautics, or common carriers.

### Form of Accounts

(d) The Authority shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Authority: *Provided*, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Authority and do not constitute an undue financial burden on such air carrier.

### Inspection of Accounts and Property

(e) The Authority shall at all times have access to all lands, buildings, and equipment of any carrier and to all accounts, records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers; and it may employ special agents or auditors, who shall have authority under the orders of the Authority to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda. The provisions of this section shall apply, to the extent found by the Authority to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5 (8) of the Interstate Commerce Act, as amended.[8]

## CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

### Acts Prohibited

SEC. 408 [*52 Stat. 1001, 49 U. S. C. 488*] (a) It shall be unlawful unless approved by order of the Authority as provided in this section—

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

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[8] SEC. 5. [*49 U. S. C. 5*] (8) For the purposes of paragraph (7) a person shall be held to be affiliated with a carrier if by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or by any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

(9) For the purposes of paragraphs (6), (7), (8), and (11), wherever reference is made to control it is immaterial whether such control is direct or indirect. As used in this paragraph and paragraphs (7), (8), and (11) the term "control" shall be construed to include the power to exercise control.

[Section 5 was restated by the Transportation Act of 1940, 54 Stat. 905, approved September 18, 1940.]

(2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

Power of Authority

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Authority, and thereupon the Authority shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Authority finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order, approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided*, That the Authority shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided further*, That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5 (8) of the Interstate Commerce Act, as amended,* such applicant shall for the purposes of this section be considered an air carrier and the Authority shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition.

* See footnote 8 for the text of section 5 (8) of the Interstate Commerce Act.

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### Interests in Ground Facilities

(c) The provisions of this section and section 409 shall not apply with respect to the acquisition or holding by any air carrier, or any officer or director thereof, of (1) any interest in any ticket office, landing area, hangar, or other ground facility reasonably incidental to the performance by such air carrier of any of its services, or (2) any stock or other interest or any office or directorship in any person whose principal business is the maintenance or operation of any such ticket office, landing area, hangar, or other ground facility.

### Jurisdiction of Accounts of Noncarriers

(d) Whenever, after the effective date of this section, a person, not an air carrier, is authorized, pursuant to this section, to acquire control of an air carrier, such person thereafter shall, to the extent found by the Authority to be reasonably necessary for the administration of this Act, be subject, in the same manner as if such person were an air carrier, to the provisions of this Act relating to accounts, records, and reports, and the inspection of facilities and records, including the penalties applicable in the case of violations thereof.

### Investigation of Violations

(e) The Authority is empowered, upon complaint or upon its own initiative, to investigate and, after notice and hearing, to determine whether any person is violating any provision of subsection (a) of this section. If the Authority finds after such hearing that such person is violating any provision of such subsection, it shall by order require such person to take such action, consistent with the provisions of this Act, as may be necessary, in the opinion of the Authority, to prevent further violation of such provision.

#### PROHIBITED INTERESTS

### Interlocking Relationships

SEC. 409 [*52 Stat. 1002, 49 U. S. C. 489*] (a) After one hundred and eighty days after the effective date of this section, it shall be unlawful, unless such relationship shall have been approved by order of the Authority upon due showing, in the form and manner prescribed by the Authority, that the public interest will not be adversely affected thereby—

(1) For any air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder holds a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(2) For any air carrier, knowingly and willfully, to have and retain an officer or director who has a representative or nominee who represents such officer or director as an officer, director, or member, or as a stockholder holding a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(3) For any person who is an officer or director of an air carrier to hold the position of officer, director, or member, or to be a stockholder holding a controlling interest, or to have a representative or

nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(4) For any air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder holds a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

(5) For any air carrier, knowingly and willfully, to have and retain an officer or director who has a representative or nominee who represents such officer or director as an officer, director, or member or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

(6) For any person who is an officer or director of an air carrier to hold the position of officer, director, or member, or to be a stockholder holding a controlling interest, or to have a representative or nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

Profit From Transfer of Securities

(b) After this section takes effect it shall be unlawful for any officer or director of any air carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof.

LOANS AND FINANCIAL AID

SEC. 410 [*52 Stat. 1003, 49 U. S. C. 490*] The Authority is empowered to approve or disapprove, in whole or in part, any and all applications made after the effective date of this section for or in connection with any loan or other financial aid from the United States or any agency thereof to, or for the benefit of, any air carrier. No such loan or financial aid shall be made or given without such approval, and the terms and conditions upon which such loan or financial aid is provided shall be prescribed by the Authority.

METHODS OF COMPETITION

SEC. 411 [*52 Stat. 1003, 49 U. S. C. 491*] The Authority may, upon its own initiative or upon complaint by any air carrier or foreign air carrier, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier or foreign air carrier has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation. If the Authority shall find, after notice and hearing, that such air carrier or foreign air carrier is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air car-

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rier or foreign air carrier to cease and desist from such practices or methods of competition.

POOLING AND OTHER AGREEMENTS

Filing of Agreements Required

SEC. 412 [*52 Stat. 1004, 49 U. S. C. 492*] (a) Every air carrier shall file with the Authority a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

Approval by Authority

(b) The Authority shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Authority may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for tansportation services performed by it. (*As amended by Act of May 16, 1942, 56 Stat. 301.*)

FORM OF CONTROL

SEC. 413 [*52 Stat. 1004, 49 U. S. C. 493*] For the purposes of this title, whenever reference is made to control, it is immaterial whether such control is direct or indirect.

LEGAL RESTRAINTS

SEC. 414 [*52 Stat. 1004, 49 U. S. C. 494*] Any person affected by any order made under sections 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws," as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

INQUIRY INTO AIR CARRIER MANAGEMENT

SEC. 415 [*52 Stat. 1004, 49 U. S. C. 495*] For the purpose of exercising and performing its powers and duties under this Act, the Authority is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information.

CLASSIFICATION AND EXEMPTION OF CARRIERS

Classification

SEC. 416 [*52 Stat. 1004, 49 U. S. C. 496*] (a) The Authority may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules, and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Authority finds necessary in the public interest.

Exemptions

(b) (1) The Authority, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Authority shall not exempt any air carrier from any provision of subsection (l) of section 401 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Authority finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Authority to exempt any air carrier from any requirement of this title, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or copilots.

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# TITLE V—NATIONALITY AND OWNERSHIP OF AIRCRAFT

## REGISTRATION OF AIRCRAFT NATIONALITY

### Registration Required

SEC. 501. [*52 Stat. 1005, 49 U. S. C. 521*] (a) It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in section 6 of the Air Commerce Act of 1926, as amended) to operate or navigate within the United States any aircraft not eligible for registration: *Provided*, That aircraft of the national-defense forces of the United States may be operated and navigated without being so registered if such aircraft are identified, by the agency having jurisdiction over them, in a manner satisfactory to the Authority. The Authority may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership thereof as the Authority may prescribe.

### Eligibility for Registration

(b) An aircraft shall be eligible for registration if, but only if—
(1) It is owned by a citizen of the United States and is not registered under the laws of any foreign country; or
(2) It is an aircraft of the Federal Government, or of a State, Territory, or possession of the United States, or the District of Columbia, or of a political subdivision thereof.

### Issuance of Certificate

(c) Upon request of the owner of any aircraft eligible for registration, such aircraft shall be registered by the Authority and the Authority shall issue to the owner thereof a certificate of registration.

### Applications

(d) Applications for such certificates shall be in such form, be filed in such manner, and contain such information as the Authority may require.

### Suspension or Revocation

(e) Any such certificate may be suspended or revoked by the Authority for any cause which renders the aircraft ineligible for registration.

### Effect of Registration

(f) Such certificate shall be conclusive evidence of nationality for international purposes, but not in any proceeding under the laws of the United States. Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue.

REGISTRATION OF ENGINES, PROPELLERS, AND APPLIANCES

SEC. 502 [*52 Stat. 1006, 49 U. S. C. 522*] The Authority may establish reasonable rules and regulations for registration and identification of aircraft engines, propellers, and appliances, in the interest of safety, and no aircraft engine, propeller, or appliance shall be used in violation of any such rule or regulation.

RECORDATION OF AIRCRAFT OWNERSHIP [10]

Establishment of Recording System

SEC. 503 [*52 Stat. 1006, 49 U. S. C. 523*] (a) The Administrator shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any specifically identified aircraft engine or engines of seven hundred and fifty or more rated take-off horsepower for each such engine or the equivalent of such horsepower, and also any assignment or amendment thereof or supplement thereto;

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier certificated under section 604 (b) of this Act for installation or use in aircraft, aircraft engines, or propellers, or any spare parts maintained by or on behalf of such an air carrier, which instrument need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof; and also any assignment or amendment thereof or supplement thereto.

Recording of Releases

(b) The Administrator shall also record under the system provided for in subsection (a) of this section any release, cancellation, discharge, or satisfaction relating to any conveyance or other instrument recorded under said system.

Conveyances To Be Recorded

(c) No conveyance the recording of which is provided for by section 503 (a) (1) made on or after August 22, 1938, and no instrument the recording of which is provided for by section 503 (a) (2) or section 503 (a) (3) made on or after the effective date of this section, shall be valid in respect of such aircraft, aircraft engine or engines, propellers, appliances, or spare parts against any person other than the person by whom the conveyance or other instrument is made or

[10] Subheadings supplied by editors as amendment did not include headings.

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given, his heir or devisee, or any person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Administrator. For the purposes of this subsection (c), such conveyance or other instrument shall take effect from the time and date of its filing for recordation, and not from the time and date of its execution.

Effect of Recording

(d) Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation, except that an instrument recorded pursuant to section 503 (a) (3) shall be effective only with respect to those of such items which may from time to time be situated at the designated location or locations and only while so situated: *Provided*, That an instrument recorded under section 503 (a) (2) shall not be affected as to the engine or engines specifically identified therein, by any instrument theretofore or thereafter recorded pursuant to section 503 (a) (3).

Form of Conveyances

(e) No conveyance or other instrument shall be recorded unless it shall have been acknowledged before a notary public or other officer authorized by the law of the United States, or of a State, Territory, or possession thereof, or the District of Columbia, to take acknowledgment of deeds.

Index of Conveyances

(f) The Administrator shall keep a record of the time and date of the filing of conveyances and other instruments with him and of the time and date of recordation thereof. He shall record conveyances and other instruments filed with him in the order of their reception, in files to be kept for that purpose, and indexed according to—

(1) the identifying description of the aircraft or aircraft engine, or in the case of an instrument referred to in section 503 (a) (3), the location or locations specified therein; and

(2) the names of the parties to the conveyance or other instrument.

Regulations

(g) The Administrator is authorized to provide by regulation for the endorsement upon certificates of registration, or aircraft certificates, of information with respect to the ownership of the aircraft for which each certificate is issued, the recording of discharges and satisfactions of recorded instruments, and other transactions affecting title to or interest in aircraft, aircraft engines, propellers, appliances, or parts, and for such other records, proceedings, and details as may be necessary to facilitate the determination of the rights of parties dealing with civil aircraft of the United States, aircraft engines, propellers, appliances, or parts.

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### Previously Unrecorded Ownership

(h) The person applying for the issuance or renewal of an airworthiness certificate for an aircraft with respect to which there has been no recordation of ownership as provided in this section shall present with his application such information with respect to the ownership of the aircraft as the Administrator shall deem necessary to show the persons who are holders of property interests in such aircraft and the nature and extent of such interests. (*503 amended by Act of June 19, 1948, 62 Stat. 493.*)

### Limitation of Security Owners Liability [11]

SEC. 504. No person having a security interest in, or security title to, any civil aircraft under a contract of conditional sale, equipment trust, chattel or corporate mortgage, or other instrument of similar nature, and no lessor of any such aircraft under a bona fide lease of thirty days or more, shall be liable by reason of such interest or title, or by reason of his interest as lessor or owner of the aircraft so leased, for any injury to or death of persons, or damage to or loss of property, on the surface of the earth (whether on land or water) caused by such aircraft, or by the ascent, descent, or flight of such aircraft or by the dropping or falling of an object therefrom, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage, or loss. (*Added by Act of June 16, 1948, 62 Stat. 470.*)

## TITLE VI—CIVIL AERONAUTICS SAFETY REGULATION

#### GENERAL SAFETY POWERS AND DUTIES

### Minimum Standards; Rules and Regulations

SEC. 601 [*52 Stat. 1007, 49 U. S. C., 551*] (a) The Authority is empowered, and it shall be its duty to promote safety of flight in air commerce by prescribing and revising from time to time—

(1) Such minimum standards governing the design, materials, workmanship, construction, and performance of aircraft, aircraft engines, and propellers as may be required in the interest of safety;

(2) Such minimum standards governing appliances as may be required in the interest of safety;

(3) Reasonable rules and regulations and minimum standards governing, in the interest of safety, (A) the inspection, servicing, and overhaul of aircraft, aircraft engines, propellers, and appliances; (B) the equipment and facilities for such inspection, servicing, and overhaul; and (C) in the discretion of the Authority, the periods for, and the manner in, which such inspection, servicing, and overhaul shall be made, including provision for examinations and reports by properly qualified private persons whose examinations or reports the Authority may accept in lieu of those made by its officers and employees;

[11] Subject heading supplied by editors as amendment did not include heading.

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(4) Reasonable rules and regulations governing the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, required in the interest of safety, including the reserve supply of aircraft fuel and oil which shall be carried in flight;

(5) Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees, of air carriers;

(6) Such reasonable rules and regulations, or minimum standards, governing other practices, methods, and procedure, as the Authority may find necessary to provide adequately for safety in air commerce; and

(7) Air traffic rules governing the flight of, and for the navigation, protection, and identification of, aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between aircraft, and between aircraft and land or water vehicles.

Needs of Service to Be Considered; Classifications of Standards, and so Forth

(b) In prescribing standards, rules, and regulations, and in issuing certificates under this title, the Authority shall give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to any differences between air transportation and other air commerce; and it shall make classifications of such standards, rules, and regulations, and certificates appropriate to the differences between air transportation and other air commerce. The Authority may authorize any aircraft, aircraft engine, propeller, or appliance, for which an aircraft certificate authorizing use thereof in air transportation has been issued, to be used in other air commerce without the issuance of a further certificate. The Authority shall exercise and perform its powers and duties under this Act in such manner as will best tend to reduce or eliminate the possibility of, or recurrence of, accidents in air transportation, but shall not deem itself required to give preference to either air transportation or other air commerce in the administration and enforcement of this title.

Delegation of Authority

(c) The Civil Aeronautics Board, subject to such terms, conditions, and limitations as the Board may specify, is empowered to delegate to the Administrator the power or authority to prescribe rules, regulations, and standards under this title and to perform functions authorized under section 702 of this Act. The Board may modify, suspend, revoke, or terminate such power or authority so delegated by it to the Administrator and may prescribe by rules and regulations such provisions and procedures for review of actions taken by the Administrator under authority delegated hereunder as it may deem necessary and appropriate in the public interest. Except as specifically provided in the rules and regulations of the Board, the filing of a petition for review shall not excuse any person from complying with the action of the Administrator nor operate in any manner to stay the enforcement of such action: *Provided*, That nothing in this subsec-

tion shall be construed as amending, modifying, or repealing any provision of the Administrative Procedure Act. (*Added by Act of July 1, 1948, 62 Stat. 1216.*)

AIRMAN CERTIFICATES

Power To Issue Certificate

SEC. 602 [*52 Stat. 1008, 49 U. S. C. 552*] (a) The Authority is empowered to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft.

Issuance of Certificate

(b) Any person may file with the Authority an application for an airman certificate. If the Authority finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform the duties pertaining to, the position for which the airman certificate is sought, it shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Authority may determine to be necessary to assure safety in air commerce. Any person whose application for the issuance or renewal of an airman certificate is denied may file with the Authority a petition for reconsideration, and the Authority shall thereupon assign such application for hearing at a place convenient to the applicant's place of residence or employment: *Provided*, That the Authority may, in its discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

Form and Recording of Certificate

(c) Each certificate shall be numbered and recorded by the Authority; shall state the name and address of, and contain a description of, the person to whom the certificate is issued; and shall be entitled with the designation of the class covered thereby. Certificates issued to all pilots serving in scheduled air transportation shall be designated "airline transport pilot" of the proper class.

AIRCRAFT CERTIFICATES

Type Certificates

SEC. 603 [*52 Stat. 1009, 49 U. S. C. 553*] (a) (1) The Authority is empowered to issue type certificates for aircraft, aircraft engines, and propellers; to specify in regulations the appliances for which the issuance of type certificates is reasonably required in the interest of safety; and to issue such certificates for appliances so specified.

(2) Any interested person may file with the Authority an application for a type certificate for an aircraft, aircraft engine, propeller, or appliance specified in regulations under paragraph (1) of this subsection. Upon receipt of an application, the Authority shall make an investigation thereof and may hold hearings thereon. The Authority shall make, or require the applicant to make, such tests during manu-

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facture and upon completion as the Authority deems reasonably necessary in the interest of safety, including flight tests and tests of raw materials or any part or appurtenance of such aircraft, aircraft engine, propeller, or appliance. If the Authority finds that such aircraft, aircraft engine, propeller, or appliance is of proper design, material, specification, construction, and performance for safe operation, and meets the minimum standards, rules, and regulations prescribed by the Authority, it shall issue a type certificate therefor. The Authority may prescribe in any such certificate the duration thereof and such other terms, conditions, and limitations as are required in the interest of safety. The Authority may record upon any certificate issued for aircraft, aircraft engines, or propellers, a numerical determination of all of the essential factors relative to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

### Production Certificate

(b) Upon application, and if it satisfactorily appears to the Authority that duplicates of any aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued will conform to such certificate, the Authority shall issue a production certificate authorizing the production of duplicates of such aircraft, aircraft engines, propellers, or appliances. The Authority shall make such inspection and may require such tests of any aircraft, aircraft engine, propeller, or appliance manufactured under a production certificate as may be necessary to assure manufacture of each unit in conformity with the type certificate or any amendment or modification thereof. The Authority may prescribe in any such production certificate the duration thereof and such other terms, conditions, and limitations as are required in the interest of safety.

### Airworthiness Certificate

(c) The registered owner of any aircraft may file with the Authority an application for an airworthiness certificate for such aircraft. If the Authority finds that the aircraft conforms to the type certificate therefor, and, after inspection, that the aircraft is in condition for safe operation, it shall issue an airworthiness certificate. The Authority may prescribe in such certificate the duration of such certificate, the type of service for which the aircraft may be used, and such other terms, conditions, and limitations as are required in the interest of safety. Each such certificate shall be registered by the Authority and shall set forth such information as the Authority may deem advisable. The certificate number, or such other individual designation as may be required by the Authority, shall be displayed upon each aircraft in accordance with regulations prescribed by the Authority.

## AIR CARRIER OPERATING CERTIFICATES

### Power to Issue

SEC. 604 [*52 Stat. 1010, 49 U. S. C. 554*] (a) The Authority is empowered to issue air carrier operating certificates and to establish minimum safety standards for the operation of the air carrier to whom any such certificate is issued.

### Issuance

(b) Any person desiring to operate as an air carrier may file with the Authority an application for an air carrier operating certificate. If the Authority finds, after investigation, that such person is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of this Act and the rules, regulations, and standards prescribed thereunder, it shall issue an air carrier operating certificate to such person. Each air carrier operating certificate shall prescribe such terms, conditions, and limitations as are reasonably necessary to assure safety in air transportation, and shall specify the points to and from which, and the civil airways over which, such person is authorized to operate as an air carrier under an air carrier operating certificate.

## MAINTENANCE OF EQUIPMENT IN AIR TRANSPORTATION

### Duty of Carriers and Airmen

SEC. 605 [*52 Stat. 1010, 49 U. S. C. 555*] (a) It shall be the duty of each air carrier to make, or cause to be made, such inspection, maintenance, overhaul, and repair of all equipment used in air transportation as may be required by this Act, or the orders, rules, and regulations of the Authority issued thereunder. And it shall be the duty of every person engaged in operating, inspecting, maintaining, or overhauling equipment to observe and comply with the requirements of this Act relating thereto, and the orders, rules, and regulations issued thereunder.

### Inspection

(b) The Authority shall employ inspectors who shall be charged with the duty (1) of making such inspections of aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture, and while used by an air carrier in air transportation, as may be necessary to enable the Authority to determine that such aircraft, aircraft engines, propellers, and appliances are in safe condition and are properly maintained for operation in air transportation; and (2) of advising and cooperating with each air carrier in the inspection and maintenance thereof by the air carrier. Whenever any inspector shall, in the performance of his duty, find that any aircraft, aircraft engine, propeller, or appliance, used or intended to be used by any air carrier in air transportation, is not in condition for safe operation, he shall so notify the carrier, in such form and manner as the Authority may prescribe; and, for a period of five days thereafter, such aircraft, aircraft engine, propeller, or appliance shall not be used in air transportation, or in such manner as to endanger air transportation, unless found by the Authority or its inspector to be in condition for safe operation.

## AIR NAVIGATION FACILITY RATING

SEC. 606 [*52 Stat. 1011, 49 Stat. U. S. C. 556*] The Authority is empowered to inspect, classify, and rate any air navigation facility

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available for the use of civil aircraft of the United States, as to its suitability for such use. The Authority is empowered to issue a certificate for any such air navigation facility.

AIR AGENCY RATING

SEC. 607 [*52 Stat. 1011, 49 U. S. C. 557*] The Authority is empowered to provide for the examination and rating of (1) civilian schools giving instruction in flying or in the repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, and appliances, as to the adequacy of the course of instruction, the suitability and airworthiness of the equipment, and the competency of the instructors; (2) repair stations or shops for the repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, or appliances, as to the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, and appliances, and the competency of those engaged in the work or giving any instruction therein; and (3) such other air agencies as may, in its opinion, be necessary in the interest of the public. The Authority is empowered to issue certificates for such schools, repair stations, and other agencies.

FORM OF APPLICATIONS

SEC. 608 [*52 Stat. 1011, 49 U. S. C. 558*] Applications for certificates under this title shall be in such form, contain such information, and be filed and served in such manner as the Authority may prescribe, and shall be under oath whenever the Authority so requires.

AMENDMENT, SUSPENSION, AND REVOCATION OF CERTIFICATES

SEC. 609 [*52 Stat. 1011, 49 U. S. C. 559*] The Authority may, from time to time, reinspect any aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, may reexamine any airman, and, after investigation, and upon notice and hearing, may alter, amend, modify, or suspend, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate if the interest of the public so requires, or may revoke, in whole or in part, any such certificate for any cause which, at the time of revocation, would justify the Authority in refusing to issue to the holder of such certificate a like certificate. In cases of emergency, any such certificate may be suspended, in whole or in part, for a period not in excess of thirty days, without regard to any requirement as to notice and hearing. The Authority shall immediately give notice of such suspension to the holder of such certificate and shall enter upon a hearing which shall be disposed of as speedily as possible. During the pendency of the proceeding the Authority may further suspend such certificate, in whole or in part, for an additional period not in excess of thirty days.

PROHIBITIONS

### Violations of Title

SEC. 610 [*52 Stat. 1012, 49 U. S. C. 560*] (a) It shall be unlawful—

(1) For any person to operate in air commerce any civil aircraft for which there is not currently in effect an airworthiness certificate, or in violation of the terms of any such certificate;

(2) For any person to serve in any capacity as an airman in connection with any civil aircraft used in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of the terms of any such certificate;

(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed;

(4) For any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate; and

(5) For any person to operate aircraft in air commerce in violation of any other rule, regulation, or certificate of the Authority under this title.

### Exemption of Foreign Aircraft and Airmen

(b) Foreign aircraft and airmen serving in connection therewith may, except with respect to the observance by such airmen of the air traffic rules, be exempted from the provisions of subsection (a) of this section, to the extent, and upon such terms and conditions, as may be prescribed by the Authority as being in the interest of the public.

## TITLE VII—AIR SAFETY BOARD

CREATION AND ORGANIZATION OF BOARD

### Appointment of Board

SEC. 701 [*52 Stat. 1012, 49 U. S. C. 581*] (a) There is created and established within the Authority an Air Safety Board. Such Board shall consist of three members to be appointed by the President by and with the advice and consent of the Senate. One of the members shall, at the time of his nomination, be an active airline pilot and shall have flown not less than three thousand hours in scheduled air transportation. Each member of the Board shall be a citizen of the United States and shall continue in office as designated by the President at the time of nomination until the last day of the second, fourth, and sixth calendar years, respectively, following the passage of this Act, but their successors shall be appointed for terms of six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Any member of the Board may be appointed to succeed himself. The Board shall annually elect one of its members as chairman of the Board. Each member of the Board shall receive a salary of $7,500 per annum. No member of the Board shall have any pecuniary interest in or own any stock in or bonds of any civil aeronautics enterprise.

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Personnel

(b) Subject to the provisions of the civil-service laws and the Classification Act of 1923, as amended, the Board shall appoint, fix the salaries, and prescribe the duties, of such assistants and other employees as it shall deem necessary in exercising and performing its powers and duties under this Act. Such of the personnel transferred to the Authority from the Department of Commerce under section 203 of this Act as were regularly employed in the investigation and analysis of accidents in air commerce prior to such transfer may, upon request of the Board, be transferred to the Board.

Temporary Personnel

(c) The Board may, without regard to the civil-service laws, engage, for temporary service in the investigation of any accident involving aircraft, persons other than officers or employees of the United States and may fix their compensation without regard to the Classification Act of 1923, as amended; and may, with the consent of the head of the executive department or independent establishment under whose jurisdiction the officer or employee is serving, secure for such service any officer or employee of the United States.

Authorization of Expenditures

(d) All expenses incurred by the Board in the investigation of accidents, or for the maintenance or operation of aircraft acquired for the use of the Board, shall be allowed upon vouchers approved by the chairman of the Board. The members and assistants of the Board are authorized to travel in the same manner as employees of the Authority.

Preservation of Records and Reports

(e) The records and reports of the Board shall be preserved in the custody of the secretary of the Authority in the same manner and subject to the same provisions respecting publication as the records and reports of the Authority, except that any publication thereof shall be styled "Air Safety Board of the Civil Aeronautics Authority", and that no part of any report or reports of the Board or the Authority relating to any accident, or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

DUTIES OF THE BOARD

General Duties

SEC. 702 [*52 Stat. 1013, 49 U. S. C. 582*] (a) It shall be the duty of the Board to—

(1) Make rules and regulations, subject to the approval of the Authority, governing notification and report of accidents involving aircraft;

(2) Investigate such accidents and report to the Authority the facts, conditions, and circumstances relating to each accident and the probable cause thereof;

(3) Make such recommendations to the Authority as, in its opinion, will tend to prevent similar accidents in the future;

(4) Make such reports and recommendations public in such form and manner as may be deemed by it to be in the public interest; and

(5) Assist the Authority in ascertaining what will best tend to reduce or eliminate the possibility of, or recurrence of, accidents by investigating such complaints filed with the Authority or the Board, and by conducting such special studies and investigations, on matters pertaining to safety in air navigation and the prevention of accidents, as may be requested or approved by the Authority.

Manner of Performance

(b) The Board shall exercise and perform its powers and duties independently of the Authority and shall not be assigned any duties in, or in connection with, any other section or unit of the Authority.

Conduct of Investigations

(c) In conducting any hearing or investigation, any member of the Board or any other officer or employee of the Board or any other person engaged or secured under subsection (c) of section 701 shall have the same powers as the examiners or other employees of the Authority have with respect to hearings or investigations conducted by the Authority.

Aircraft

(d) Any aircraft, aircraft engine, propeller, or appliance affected by, or involved in, an accident in air commerce shall be preserved in accordance with, and shall not be moved except in accordance with, regulations prescribed by the Board.

## TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

THE PRESIDENT OF THE UNITED STATES

SEC. 801 [*52 Stat. 1014, 49 U. S. C. 601*] The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Authority before hearing thereon, and all decisions thereon by the Authority shall be submitted to the President before publication thereof. This section shall not apply to the issuance or denial of any certificate issuable under section 401 (e) or any permit issuable under section 402 (c) or to the original terms, conditions, or limitations of any such certificate or permit.

THE DEPARTMENT OF STATE

SEC. 802 [*52 Stat. 1014, 49 U. S. C. 602*] The Secretary of State shall advise the Authority of, and consult with the Authority con-

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cerning, the negotiation of any agreements with foreign governments for the establishment or development of air navigation, including air routes and services.

WEATHER BUREAU

SEC. 803 [*52 Stat. 1014, 49 U. S. C. 603*] In order to promote safety and efficiency in air navigation to the highest possible degree, the Chief of the Weather Bureau, under the direction of the Secretary of Commerce, shall, in addition to any other functions or duties pertaining to weather information for other purposes, (1) make such observations, measurements, investigations, and studies of atmospheric phenomena, and establish such meteorological offices and stations, as are necessary or best suited for ascertaining, in advance, information concerning probable weather conditions; (2) furnish such reports, forecasts, warnings, and advices to the Administrator, and to such persons engaged in civil aeronautics as may be designated by the Administrator, and to such other persons as the Chief of the Weather Bureau may determine, and such reports shall be made in such manner and with such frequency as will best result in safety in and in facilitating air navigation; (3) cooperate with persons engaged in air commerce, or employees thereof, in meteorological service, establish and maintain reciprocal arrangements under which this provision is to be carried out and collect and disseminate weather reports available from aircraft in flight; (4) establish and coordinate the international exchanges of meteorological information required for the safety and efficiency of air navigation; (5) participate in the development of an international basic meteorological reporting network, including the establishment, operation, and maintenance of reporting stations on the high seas, in polar regions, and in foreign countries in cooperation with other governmental agencies of the United States and the meteorological services of foreign countries and with persons engaged in air commerce; (6) coordinate meteorological requirements in the United States in order to maintain standard observations, promote efficient use of facilities and avoid duplication of services unless such duplication tends to promote the safety and efficiency of air navigation; (7) promote and develop meteorological science and foster and support research projects in meteorology through the utilization of private and governmental research facilities and provide for the publication of the results of such research projects unless such publication would be contrary to the public interest; and (8) detail annually, within the limits of available appropriations made by Congress, members of the Weather Bureau personnel for training at Government expense, either at civilian institutions or otherwise, in advanced methods of meteorological science: *Provided*, That no such member shall lose his individual status or seniority rating in the Bureau merely by reason of absence due to such training. (*As amended by Act of August 8, 1946, 60 Stat. 944.*)

## TITLE IX—PENALTIES

CIVIL PENALTIES

### Safety and Postal Offenses

SEC. 901 [*52 Stat. 1015, 49 U. S. C. 621*] (a) Any person who violates (1) any provision of titles V, VI, and VII of this Act, or

any provision of subsection (a) (1) of section 11 of the Air Commerce Act of 1926, as amended, or (2) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. Any such penalty may be compromised by the Authority or the Postmaster General, as the case may be. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

Liens

(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: *Provided*, That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.

CRIMINAL PENALTIES

General

SEC. 902 [*52 Stat. 1015, 49 U. S. C. 622*] (a) Any person who knowingly and willfully violates any provision of this Act (except titles V, VI, and VII), or any order, rule, or regulation issued under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise herein provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

Forgery of Certificates

(b) Any person who knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly uses or attempts to use any such fraudulent certificate, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not exceeding $1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment.

Interference With Air Navigation

(c) A person shall be subject to a fine of not exceeding $5,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment, who—

(1) with intent to interfere with air navigation within the United States, exhibits within the United States any light or signal at such place or in such manner that it is likely to be mistaken for a true light or signal established pursuant to this Act, or for a true light or signal in connection with an airport or other air navigation facility; or

(2) after due warning by the Administrator, continues to maintain any misleading light or signal; or

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(3) knowingly removes, extinguishes, or interferes with the operation of any such true light or signal.

Granting Rebates

(d) Any air carrier or foreign air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, offer, grant, or give, or cause to be offered, granted, or given, any rebate or other concession in violation of the provisions of this Act, or who, by any device or means, shall, knowingly and willfully, assist, or shall willingly suffer or permit, any person to obtain transportation or services subject to this Act at less than the rates, fares, or charges lawfully in effect, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject for each offense to a fine of not less than $100 and not more than $5,000.

Failure To File Reports; Falsification of Records

(e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Authority as required by this Act, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Authority, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.

Divulging Information

(f) If any member of the Authority or the Air Safety Board, or the Administrator, or any officer or employee of any of them, shall knowingly and willfully divulge any fact or information which may come to his knowledge during the course of an examination of the accounts, records, and memoranda of any air carrier, or which is withheld from public disclosure under section 1104, except as he may be directed by the Authority, or the Air Safety Board in the case of information ordered to be withheld by it, or by a court of competent jurisdiction or a judge thereof, he shall upon conviction thereof be subject for each offense to a fine of not more than $5,000 or imprisonment for not more than two years, or both.

Refusal To Testify

(g) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpena or lawful requirement of the Authority or the Air Safety Board, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $100 nor more than $5,000, or imprisonment for not more than one year, or both.

VENUE AND PROSECUTION OF OFFENSES

### Venue

SEC. 903 [*52 Stat. 1017, 49 U. S. C. 623*] (a) The trial of any offense under this Act shall be in the district in which such offense is committed; or if the offense is committed upon the high seas, or out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender may be found or into which he shall be first brought. Whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

### Procedure in Respect of Civil Penalties

(b) (1) Any civil penalty imposed under this Act may be collected by proceedings in personam against the person subject to the penalty and, in case the penalty is a lien, by proceedings in rem against the aircraft, or by either method alone. Such proceedings shall conform as nearly as may be to civil suits in admiralty, except that either party may demand trial by jury of any issue of fact, if the value in controversy exceeds $20, and the facts so tried shall not be reexamined other than in accordance with the rules of the common law. The fact that in a libel in rem the seizure is made at a place not upon the high seas or navigable waters of the United States shall not be held in any way to limit the requirement of the conformity of the proceedings to civil suits in rem in admiralty.

(2) Any aircraft subject to such lien may be summarily seized by and placed in the custody of such persons as the Authority may by regulation prescribe, and a report of the cause shall thereupon be transmitted to the United States attorney for the judicial district in which the seizure is made. The United States attorney shall promptly institute proceedings for the enforcement of the lien or notify the Authority of his failure so to act.

(3) The aircraft shall be released from such custody upon payment of the penalty or the amount agreed upon in compromise; or seizure in pursuance of process of any court in proceedings in rem for enforcement of the lien, or notification by the United States attorney of failure to institute such proceedings; or deposit of a bond in such amount and with such sureties as the Authority may prescribe, conditioned upon the payment of the penalty or the amount agreed upon in compromise.

(4) The Supreme Court of the United States, and under its direction other courts of the United States, may prescribe rules regulating such proceedings in any particular not provided by law.

## TITLE X—PROCEDURE

CONDUCT OF PROCEEDINGS

SEC. 1001 [*52 Stat. 1017, 49 U. S. C. 641*] The Authority may conduct its proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice. No member of the Authority shall participate in any hearing or proceeding in which he

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has a pecuniary interest. Any person may appear before the Authority and be heard in person or by attorney. Every vote and official act of the Authority shall be entered of record, and its proceedings shall be open to the public upon the request of any interested party unless the Authority determines that secrecy is requisite on grounds of national defense.

COMPLAINTS TO AND INVESTIGATIONS BY THE AUTHORITY

Filing of Complaints Authorized

SEC. 1002 [*2 Stat. 1018, 49 U. S. C. 642*] (a) Any person may file with the Authority a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Authority to investigate the matters complained of. Whenever the Authority is of the opinion that any complaint does not state facts which warrant an investigation or action on its part, it may dismiss such complaint without hearing.

Investigations on Initiative of Authority

(b) The Authority is empowered at any time to institute an investigation, on its own initiative, in any case and as to any matter or thing concerning which complaint is authorized to be made to or before the Authority by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The Authority shall have the same power to proceed with any investigation instituted on its own motion as though it had been appealed to by complaint.

Entry of Orders for Compliance With Act

(c) If the Authority finds, after notice and hearing, in any investigation instituted upon complaint or upon its own initiative, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Authority shall issue an appropriate order to compel such person to comply therewith.

Power to Prescribe Rates and Practices of Air Carriers

(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Authority shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Authority shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification,

rule, regulation, or practice thereafter to be made effective: *Provided*, That as to rates, fares, and charges for overseas air transportation, the Authority shall determine and prescribe only a just and reasonable maximum or minimum or maximum and minimum rate, fare, or charge.

Rule of Rate Making

(e) In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Authority shall take into consideration, among other factors—

(1) The effect of such rates upon the movement of traffic;

(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

(3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;

(4) The inherent advantages of transportation by aircraft; and

(5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

Removal of Discrimination in Foreign Air Transportation

(f) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Authority shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Authority may alter the same to the extent necessary to correct such discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice.

Suspension of Rates

(g) Whenever any air carrier shall file with the Authority a tariff stating a new individual or joint (between air carriers) rate, fare, or charge for interstate or overseas air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Authority is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Authority, by filing with such tariff, and delivering to the air carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such

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tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Authority may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Authority may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect at the end of such period: *Provided*, That this subsection shall not apply to any initial tariff filed by any air carrier.

### Power to Prescribe Divisions of Rates

(h) Whenever, after notice and hearing, upon complaint or upon its own initiative, the Authority is of the opinion that the divisions of joint rates, fares, or charges for air transportation are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the air carriers or foreign air carriers parties thereto, the Authority shall prescribe the just, reasonable, and equitable divisions thereof to be received by the several air carriers. The Authority may require the adjustment of divisions between such air carriers from the date of filing the complaint or entry of order of investigation, or such other date subsequent thereto as the Authority finds to be just, reasonable, and equitable.

### Power To Establish Through Air Transportation Service

(i) The Authority shall, whenever required by the public convenience and necessity, after notice and hearing, upon complaint or upon its own initiative, establish through service and joint rates, fares, or charges (or the maxima or minima, or the maxima and minima thereof) for interstate or overseas air transportation, or the classifications, rules, regulations, or practices affecting such rates, fares, or charges, or the value of the service thereunder, and the terms and conditions under which such through service shall be operated: *Provided*, That as to joint rates, fares, and charges for overseas air transportation the Authority shall determine and prescribe only just and reasonable maximum or minimum or maximum and minimum joint rates, fares, or charges.

## JOINT BOARDS

### Designation of Boards

SEC. 1003 [*52 Stat. 1020, 49 U. S. C. 643*] (a) The Authority and the Interstate Commerce Commission shall direct their respective chairmen to designate, from time to time, a like number of members of each to act as a joint board to consider and pass upon matters referred to such board as provided in subsection (c) of this section.

Through Service and Joint Rates

(b) Air carriers may establish reasonable through service and joint rates, fares, and charges with other common carriers; except that with respect to transportation of property, air carriers not directly engaged in the operation of aircraft in air transportation (other than companies engaged in the air express business) may not establish joint rates or charges, under the provisions of this subsection, with common carriers subject to the Interstate Commerce Act. In case of through service by air carriers and common carriers subject to the Interstate Commerce Act, it shall be the duty of the carriers parties thereto to establish just and reasonable rates, fares, or charges and just and reasonable classifications, rules, regulations, and practices affecting such rates, fares, or charges, or the value of the service thereunder, and if joint rates, fares, or charges shall have been established with respect to such through service, just, reasonable, and equitable divisions of such joint rates, fares, or charges as between the carriers participating therein. Any air carrier, and any common carrier subject to the Interstate Commerce Act, which is participating in such through service and joint rates, fares, or charges, shall include in its tariffs, filed with the Civil Aeronautics Board or the Interstate Commerce Commission, as the case may be, a statement showing such through service and joint rates, fares, or charges. (*As amended by Act of May 16, 1942, 56 Stat. 300, and Act of August 4, 1947, 61 Stat. 743.*)

Jurisdiction of Boards

(c) Matters relating to such through service and joint rates, fares, or charges may be referred by the Authority or the Interstate Commerce Commission, upon complaint or upon its own initiative, to a joint board created as provided in subsection (a). Complaints may be made to the Interstate Commerce Commission or the Authority with respect to any matter which may be referred to a joint board under this subsection.

Power of Boards

(d) With respect to matters referred to any joint board as provided in subsection (c), if such board finds, after notice and hearing, that any such joint rate, fare, or charge, or classification, rule, regulation, or practice, affecting such joint rate, fare, or charge or the value of the service thereunder is or will be unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial, or that any division of any such joint rate, fare, or charge, is or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto, it is authorized and directed to take the same action with respect thereto as the Authority is empowered to take with respect to any joint rate, fare, or charge, between air carriers, or any divisions thereof, or any classification, rule, regulation, or practice affecting such joint rate, fare, or charge or the value of the service thereunder.

Judicial Enforcement and Review

(e) Orders of the joint boards shall be enforceable and reviewable as provided in this Act with respect to orders of the Authority.

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### Power To Take Evidence

SEC. 1004 [*52 Stat. 1021, 49 U. S. C. 644*] (a) Any member or examiner of the Authority, when duly designated by the Authority for such purpose, may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Authority. In all cases heard by an examiner or a single member the Authority shall hear or receive argument on request of either party.

### Power To Issue Subpena

(b) For the purposes of this Act the Authority shall have the power to require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation. Witnesses summoned before the Authority shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

### Enforcement of Subpena

(c) The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the United States, at any designated place of hearing. In case of disobedience to a subpena, the Authority, or any party to a proceeding before the Authority, may invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section.

### Contempt

(d) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear before the Authority (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

### Deposition

(e) The Authority may order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Authority and having power to administer oaths. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Authority, as hereinbefore provided.